

**Sahara-Reno Corporation, d/b/a Sahara Reno and Hotel, Motel, Restaurant Employees and Bartenders Local Union No. 86, a/w Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO. Case 32-CA-1384**

July 13, 1982

**DECISION AND ORDER**

**BY CHAIRMAN VAN DE WATER AND  
MEMBERS FANNING, ZIMMERMAN, AND  
HUNTER**

On June 20, 1980, Administrative Law Judge Gordon J. Myatt issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs, and Respondent filed an answering brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> of the Administrative Law Judge and to adopt his recommended Order, as modified herein.<sup>3</sup>

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

Respondent has excepted to the Administrative Law Judge's finding that employee Helton testified that he came to the hotel at 11:30 a.m. on October 2, 1978. While Helton's initial testimony was to that effect, Respondent correctly notes that Helton later clarified his testimony and stated that he arrived at the hotel at 10 a.m., met with union officials outside, then entered the hotel at 11:30 a.m. We find that this inadvertent error does not affect the Administrative Law Judge's legal conclusions.

In sec. III.F.2, of his Decision, the Administrative Law Judge inadvertently referred to the discharge of "Coleman," while the context makes it evident that he meant to refer to "Tollman." Similarly, in sec. 9 of his "Concluding Findings," the Administrative Law Judge referred to Nigro's dissatisfaction with Perkins and "Tobin" when he clearly intended to refer to Perkins and Tollman.

<sup>2</sup> The Administrative Law Judge concluded, and we agree, that Respondent violated Sec. 8(a)(1) of the Act by maintaining and enforcing a no-solicitation rule which prohibited solicitation "in any working area for any purpose . . . on company time," without having demonstrated any special justification for the rule. In so doing, we note that the Board consistently has found the prohibition of solicitation during "company time" to be overly broad. See, e.g., *Florida Steel Corporation*, 215 NLRB 97, 98 (1974).

Chairman Van de Water and Members Zimmerman and Hunter, in adopting the Administrative Law Judge's conclusion that Respondent unlawfully threatened employees on October 2, 1978, note that the Administrative Law Judge found that the employees' protest on that date concerned their working conditions as well as their dissatisfaction with Executive Food and Beverage Director Bienz and their fear that Bienz would discharge Executive Chef Perkins. Accordingly, they deem it unnecessary to pass on the Administrative Law Judge's statement that an employee protest concerning only Bienz' continued supervision and/or Perkins' rumored discharge would constitute protected concerted activity.

<sup>3</sup> We find that it will effectuate the purposes of the Act to require Respondent to expunge from its personnel records, or other files, any reference to the unlawful layoffs of employees William O'Dell and Howard Topping on October 6, 1978, and of all food department employees laid off as a result of the decision to close the Sahara coffeshop on October

1. The Administrative Law Judge concluded, and we agree, that Respondent violated Section 8(a)(3) and (1) of the Act by closing the Sahara coffeshop, laying off many of the food service employees who worked there, and laying off store-room employees O'Dell and Topping because of employee activity in support of the Union. Following the issuance of the Administrative Law Judge's Decision in this proceeding the Board issued its decision in *Wright Line*,<sup>4</sup> in which it articulated a two-step mode of analysis for examining causation in cases alleging violations of Section 8(a)(3) or Section 8(a)(1) turning on mixed or dual motivation on the part of an employer. For the reasons set forth below, we find the Administrative Law Judge's conclusion that Respondent violated the Act by engaging in the above conduct is consistent with the mode of analysis set forth in *Wright Line*.

With regard to the October 6, 1978,<sup>5</sup> closing of the coffeshop and resulting layoff of food service employees who worked there, the Administrative Law Judge found without merit Respondent's assertion that it acted solely for economic reasons. He found that, unlike plans to close other portions of its operations, Respondent neither mentioned plans to close the coffeshop to its department heads nor included them in memoranda covering plans to improve the profitability of its operations. The Administrative Law Judge further found that, had Respondent determined prior to October 2, 1978, the date when employee union activity began, to close the coffeshop, the department heads would have been notified of those plans. He further noted that Respondent's union animus had been clearly demonstrated; that Respondent was aware that employee unrest was centered in the Sahara food service employees, who bore the brunt of the layoffs; and that Sahara food service employees were treated less favorably than food service employees in other parts of its operations who had not engaged in union activities. Additionally, he found, based on credited testimony, that Respondent told its supervisors that it would close rather than recognize a union and instructed them to select for layoff marginal employees and those who were active for the Union. Based on these findings, *inter alia*, the Administrative Law Judge concluded that, although Respondent had ample economic justification to restructure its food service department, it decided to close the Sahara cof-

6, 1978 and to notify them in writing that this has been done and that evidence of these unlawful layoffs will not be used as a basis for further personnel actions against them. See *Sterling Sugars, Inc.*, 261 NLRB 472 (1982). We shall modify the Administrative Law Judge's recommended Order accordingly.

<sup>4</sup> *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

<sup>5</sup> Except as otherwise indicated, all dates are in 1978.

feeshop only after commencement of union activity by coffeeshop employees and that its action was designed to deliver a devastating blow to such activity.

We conclude that the Administrative Law Judge's findings with regard to Respondent's knowledge of the employees' union activity, the timing of Respondent's decision to close the coffeeshop, and the evidence of animus and disparate treatment of coffeeshop employees constitute a *prima facie* showing sufficient to support the inference that a motivating factor in Respondent's decision was the employees' union activity. We further conclude, based on the Administrative Law Judge's findings, and particularly the manner in which Respondent's decision was made, that, although Respondent may have had economic justification to restructure its food service operations, it has not established that the coffeeshop would have been closed even absent the employees' union activity.

With regard to O'Dell, the Administrative Law Judge credited testimony that Director of Purchasing DiFulvio, who had informed O'Dell of his layoff, subsequently admitted to O'Dell that he had been unable to help O'Dell because of his involvement in union activities. This statement constitutes a *prima facie* showing that O'Dell was laid off for union-related reasons. We further find that Respondent has not rebutted this *prima facie* showing. In this regard, Respondent asserts that O'Dell was laid off because the reorganization of its food service department diminished its need for storeroom employees, and that O'Dell was the least senior storeroom employee. We note, however, that O'Dell would not have been the least senior such employee if his prior service with Respondent were considered, and that Respondent has not shown that its policy has been to compute seniority only from the most recent date of hire for purposes of layoff. Further, the evidence indicates that seniority was not a factor in Respondent's other layoffs which occurred around the same time. Thus, as noted above, the Administrative Law Judge credited testimony that, in laying off Sahara coffeeshop employees, Respondent's supervisors were instructed to choose "marginal" employees and those employees who were engaged in union activity, rather than the least senior employees. Accordingly, we find that Respondent has not established that O'Dell would have been laid off absent his union activity.

With regard to Topping, the Administrative Law Judge credited evidence which we find establishes all of the elements of a *prima facie* showing that a motivating factor in Respondent's decision to lay off Topping was his union activities. Thus, there

can be no doubt that Respondent was aware of Topping's activities and that Respondent expressed animus not only to union activity in general but specifically as to Topping by enforcing its unlawful no-solicitation rule against him upon learning that he had handed out union cards. Finally, the timing of the layoff supports an inference that Topping's union activities motivated Respondent to lay him off. We further conclude that Respondent's evidence concerning Topping's work performance did not rebut the *prima facie* case established by the General Counsel. Thus, as noted by the Administrative Law Judge, although Topping was not a model employee, Respondent had tolerated his work and granted Topping a pay increase a week before the layoff. Although Respondent contended that this increase was due to a tight labor market, the Administrative Law Judge specifically discredited such testimony and noted that various other witnesses of Respondent had indicated that, in fact, there was a ready availability of skilled job applicants. Accordingly, we conclude that Respondent has failed to show that Topping would have been laid off in the absence of his union activity.

Accordingly, applying the analysis set forth in *Wright Line* and based on all of the Administrative Law Judge's findings, particularly those summarized herein, we conclude that the General Counsel has established that Respondent has violated the Act by closing the Sahara coffeeshop, laying off food service employees who worked in the coffeeshop, and laying off O'Dell and Topping.

2. The General Counsel excepts to the Administrative Law Judge's failure to find the layoff of several sous chefs unlawful because it was part of Respondent's discriminatory layoff of food service employees. The General Counsel argues that, although the complaint alleges and the answer admits that Sous Chef Van DeBogart was a supervisor, the other sous chefs may have been rank-and-file employees who would be entitled to reinstatement and backpay along with other laid-off employees. Alternatively, the General Counsel, relying on *Nevis Industries, Inc., d/b/a Fresno Townhouse*, 246 NLRB 1053 (1979), argues that, even if the sous chefs were supervisors, their layoff was an integral part of Respondent's pattern of unlawful conduct and that, therefore, the sous chefs should be reinstated along with the laid-off employees.

Respondent contends that the lawfulness of the layoff of sous chefs was neither timely raised nor fully and fairly litigated. Thus, Respondent notes that the instant complaint alleges only the unlawful layoff of "employees," while at the same time the complaint alleges, and the answer admits, that Sous Chef Van DeBogart was a supervisor. Further, Re-

spondent observes that the General Counsel referred to sous chefs as supervisors in his brief. Accordingly, Respondent argues that the General Counsel's first theory, that sous chefs are not supervisors, is "preposterous."

With regard to the General Counsel's alternative theory, Respondent contends that, unlike cases where employers have been found to have acted unlawfully in laying off all employees and supervisors alike in an effort to rid a facility of union activity, here Respondent laid off only part of the food department. Further, Respondent argues that, at best, the General Counsel's evidence indicates only that four or five employees were selected for layoff because of their union activity. Respondent further argues that only two sous chefs were laid off, and that there is no evidence that either was involved in the Union, while Sous Chef Van DeBogart, who may have been involved in the Union, was never laid off.

We agree with Respondent that the General Counsel's argument that sous chefs are employees rather than supervisors is without merit. Thus, although the supervisory status of sous chefs was never directly raised, there is sufficient evidence in the record to indicate that sous chefs possessed supervisory authority. In this regard, we note particularly testimony that sous chefs had the authority to give employees time off and to enforce Respondent's no-solicitation rule. Accordingly, we conclude that sous chefs are supervisors rather than employees.

We further find no merit in the General Counsel's alternative theory. The record shows that several of the sous chefs were heavily involved in organizing the October 2 employee protest and in presenting the employees' grievances to management. However, in its recent decision in *Parker-Robb Chevrolet, Inc.*, 262 NLRB 402 (1982), the Board held that the protection of the Act does not extend to supervisors who are disciplined or discharged as a result of their participation in union or concerted activity. In so doing, the Board overruled *Fresno Townehouse supra*, on which the General Counsel relies, and similar cases to the extent those cases held that a violation is established when the discharge of supervisors is an "integral part" of an employer's pattern of unlawful conduct directed against employees. Accordingly, even assuming, *arguendo*, that several sous chefs were laid off as an integral part of Respondent's pattern of unfair labor practices against employees, we conclude, for the reasons fully set forth in *Parker-Robb*, that there is no basis for finding unlawful these supervisory layoffs.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Sahara-Reno Corporation, d/b/a Sahara Reno, Reno, Nevada, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as new paragraph 2(b) and reletter the subsequent paragraphs accordingly:

"(b) Expunge from its personnel records, or other files, any reference to the unlawful layoffs of William O'Dell and Howard Topping on October 6, 1978, and of all food department employees laid off as a result of the decision to close the Sahara coffeeshop on October 6, 1978 and notify them in writing that this has been done and that evidence of these unlawful layoffs will not be used as a basis for future personnel actions against them."

2. Substitute the attached notice for that of the Administrative Law Judge.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Act, as amended, gives all employees the right:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT threaten employees with disciplinary action or discharge if they leave their work stations and engage in protected concerted activities in protest of their working conditions.

WE WILL NOT inform employees that they will be discharged if they engage in activities on behalf of Hotel, Motel, Restaurant Employees and Bartenders Local Union No. 86, a/w Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, or any other labor organization.

WE WILL NOT inform employees who have been laid off that the reason for their layoff is because they engaged in activities on behalf of the Union.

WE WILL NOT threaten employees with arrest if they engage in union activities on our property.

WE WILL NOT maintain or enforce an invalid no-solicitation rule prohibiting employees from soliciting on company time in work areas.

WE WILL NOT close portions of our operation thereby causing the layoff of employees in order to suppress union activity.

WE WILL NOT lay off employees because they are involved in activities on behalf of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights, described above, guaranteed them in Section 7 of the Act.

WE WILL offer William O'Dell, Howard Topping, and all food department employees laid off as a result of our decision to close the Sahara coffeeshop on October 6, 1978, immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and WE WILL make them whole for any loss of pay they may have suffered as a result of our unlawful discrimination against them, plus interest.

WE WILL expunge from our personnel records, or other files, any reference to the October 6, 1978, layoffs of William O'Dell and Howard Topping, and of all food department employees laid off as a result of the decision to close the Sahara coffeeshop on October 6, 1978, and WE WILL notify them in writing that this has been done and that evidence of these unlawful discharges will not be used as a basis for future personnel actions against them.

SAHARA-RENO CORPORATION, D/B/A  
SAHARA RENO

### DECISION

#### STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge: Upon a charge filed on November 20, 1978, by Hotel, Motel, Restaurant Employees and Bartenders Local Union No. 86, a/w Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO (hereinafter called the Union), against Sahara-Reno Corporation, d/b/a Sahara Reno (hereinafter called the Respondent or the Sahara)

the Regional Director for Region 32 issued a complaint and notice of hearing on January 31, 1979. A first amended charge was filed by the Union on May 11, 1979, and an amended complaint and notice of hearing was issued by the Acting Regional Director on August 9, 1979.

The amended complaint alleges that Respondent committed numerous violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.* (hereinafter called the Act). More specifically, the amended complaint alleges that the Respondent, through its agents or supervisors: (1) threatened employees with reprisals if they engaged in union or protected activities; (2) threatened to terminate employees on several occasions if they engaged in union or protected activities; (3) unlawfully interrogated an employee about his union or protected activities; (4) informed a laid-off employee that he had been terminated because of his union activities; (5) threatened a laid-off employee with arrest if he ever came on the Respondent's property to engage in union activities; and (6) engaged in and/or created an impression of engaging in unlawful surveillance of employees' union activities at the local union hall. The amended complaint further alleges that the Respondent closed the coffeeshop and buffet<sup>1</sup> at the Sahara Reno on October 6, 1978, and laid off employees and refused to reinstate them because they joined or assisted the Union or engaged in other protected concerted activities. Finally, the amended complaint alleges that the Respondent unlawfully terminated employees Howard Topping and William O'Dell on October 6 and 7, 1978, and refused to reinstate them to their former positions of employment. During the course of the hearing, the complaint was further amended to allege that the Respondent maintained and discriminatorily enforced a facially invalid no-solicitation rule in violation of Section 8(a)(1) of the Act.

The Respondent filed an answer in which it admitted certain allegations of the amended complaint, clarified others, and specifically denied the commission of any unfair labor practices. In addition, at the hearing the Respondent specifically denied the amended allegation relating to maintaining and discriminatorily enforcing a facially invalid no-solicitation rule.

A hearing was held on this matter in Reno, Nevada, on various dates during the months of September and October 1979. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses, and to present material and relevant evidence on the issues involved herein. Briefs were submitted by counsel for the General Counsel and the Respondent and have been duly considered.

Upon the entire record in this case, including my observation of the witnesses and their demeanor while testifying, I make the following:

<sup>1</sup> Although the amended complaint alleges that the buffet was closed by the Respondent on this date, the General Counsel never contended nor was any evidence ever intended to be introduced to indicate that the buffet at the Sahara Reno was closed by the Respondent. It is clear that the closing involved in this case relates solely to the coffeeshop in the Sahara Reno.

## FINDINGS OF FACT

## I. JURISDICTION

The Sahara Reno is a hotel and gaming casino owned and operated by the hotel division of the Del Webb Corporation, an Arizona corporation. This division of the Del Webb Corporation owns and operates a number of hotels in Arizona, California, and Nevada. Commonly, the hotels in Nevada are designated with the parent corporation's name; i.e., Del Webb's Sahara Las Vegas, Del Webb's Sahara Tahoe, and the only facility involved herein, Del Webb's Sahara Reno. The hotel division is headed by a president and each hotel is operated by a vice president and general manager.

The Sahara Reno is a Nevada corporation and its place of business is located in Reno, Nevada. During the 12-month period preceding the issuance of the amended complaint herein, the Sahara Reno grossed revenue in excess of \$500,000. During a similar period, the Sahara Reno, in the course and conduct of its business operations, purchased and received goods or services valued in excess of \$50,000 directly from suppliers located outside the State of Nevada.

On the basis of the above, I find that the Respondent, Sahara Reno, is and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

## II. THE LABOR ORGANIZATION INVOLVED

Hotel, Motel, Restaurant Employees and Bartenders Local Union No. 86, a/w Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

## A. Background Facts

Sometime in 1974, the Del Webb Corporation purchased the Primadonna Casino in Reno. The "Prim," as it was commonly called, was an old establishment which contained a gaming casino and eating facilities consisting of a coffeeshop, a buffet, a snackbar, and a steak house. It fronted on Virginia Street, the main gambling street in Reno. In 1976, Del Webb Corporation announced plans to build the Sahara Reno immediately behind and across the street from the Prim. Construction started in 1977 and the grand opening was on July 1, 1978.<sup>2</sup> Although the Sahara Reno opened for business on that date, the construction work on the multimillion dollar facility was far from complete.<sup>3</sup> In order to comply with the requirements of the licensing authorities, the hotel had to have at least 100 rooms available for guests. However, at the time of the grand opening only 37 of those rooms were fully appointed and occupied. Construction delays and setbacks resulted in postponing the opening of the showroom where headline entertainers were to perform. The only restaurant facilities available at the time of the

grand opening were the coffeeshop, the buffet, and a snackbar. In addition, room service was available for the limited number of hotel guests. Not all of the elevators were fully operational and because construction was still going on, some of the elevators in operation had to be removed from guest service for use by the contractors.

Although the Prim and the Sahara were separated by a street (Sierra Street) they were connected by an enclosed, overhead walkway which spanned the street. Initially each of the properties was operated as a separate entity. The Prim was managed by Tom Aro, an assistant general manager, and the Sahara was managed by Vlad Chuhlantseff, also an assistant general manager. Both Aro and Chuhlantseff reported to Doyle Mathia, who was at that time the general manager of the Reno operations and a vice president of the hotel division of Del Webb Corporation. All of the hiring of employees, accounting and payroll functions, financial reporting and the like, was separate for each establishment. There were certain overlapping responsibilities, however, vested in several employees. For example, the food and beverage director of the Sahara, Kenneth Tollman, had overall responsibility in this same area for the Prim. Similarly, the initial executive director of advertising for the Sahara, Larry Close, also functioned in this capacity for the Prim. Also, the director of purchasing, Enrico DiFulvio, was responsible for purchasing for both operations.

Sometime prior to August, Mathia became president of the hotel division of Del Webb. Because significant losses were being incurred in the Reno operation, Mathia caused an analysis to be conducted, discussed in detail, *infra*, and management began to take steps to integrate the operation of the two properties. Aro was moved during the latter part of August to corporate headquarters and subsequently to Del Webb's Atlantic City, New Jersey, operation. Chuhlantseff then became the general manager of the Reno operations and a vice president of the hotel division.

## B. The Progress of the Sahara After Its Opening

As noted, the Sahara opened for business on July 1, even though the construction work on the facility had not been completed. Because of the construction delays, the showroom, which was also scheduled to open on July 1, did not open for business until July 27. This setback interfered with the booking of name performers and lesser-known entertainers had to be substituted. This in turn decreased the drawing power of the showroom and fewer customers than projected by the Sahara management were attracted to the facility. In addition, financial records introduced into evidence by the Respondent disclosed that the Sahara Reno was incurring substantial losses in its operation. For July, the overall losses incurred were \$429,188. (Resp. Exh. 5.) The losses increased in August to \$1,128,570. (Resp. Exh. 6.) In mid-August, Mathia, now president of the hotel division, sent Edward Nigro from Las Vegas to evaluate the Reno operation and to come up with proposals for reducing the high rate of loss. Nigro was formerly a vice president and the general manager of the Sahara Las Vegas. He subsequently became the executive vice president of the

<sup>2</sup> Unless otherwise indicated, all dates hereafter refer to the year 1978.

<sup>3</sup> The record indicates that the Sahara Reno was estimated to be a \$55 million hotel-gaming casino facility.

hotel division in charge of all of the Nevada operations for the Del Webb Corporation.

The minutes of the meeting between Chuhlantseff and the department heads of the Sahara reflect a constant concern over the losses experienced in the Sahara's operation and the need to reduce them by attracting more customers and cutting costs in all departments. (Resp. Exhs. 14-18.) One of the prime concerns, although by no means the only major concern, was the loss incurred by the food department of the Sahara. The records of the Respondent reveal that for July the Sahara food department loss was \$72,423. (Resp. Exh. 10.) For August these losses totaled \$148,807 (Resp. Exh. 9), and amounted to \$153,575 in September (Resp. Exh. 8). Chuhlantseff testified that although in the hotel-gaming casino industry the restaurant facilities were not expected to earn a profit (the clear indication being that the major source of profits were derived from the casino operation), these losses were at a level out of proportion with the industry norm.

After Nigro's initial visit to Reno, he and Chuhlantseff began discussing tentative proposals designed to reduce the amount of losses experienced by the Reno operation. Nigro, who was no longer employed by the Del Webb Corporation at the time of the hearing,<sup>4</sup> testified that he determined there was duplication of functions between the two properties. Initially it was the thinking of the Del Webb Corporation officials that the Prim and the Sahara Reno should be operated independently. The Prim was a much older establishment with only gaming casino and restaurant facilities. In comparison to the lavishness of the Sahara, it was a rundown facility with worn carpeting and furnishings. The original view of the corporate officials was that the Prim would attract patrons from a different customer market than would be attracted to the Sahara. For this reason, it was determined that the two establishments would be separate and distinct in all respects.

Nigro, on the other hand, came to the conclusion, after his initial survey of the Reno properties, that they should be integrated and the Prim brought up to the standards of the Sahara. He felt there was duplication of management and accounting functions and procedures as well as unnecessary costs incurred in running the two properties as separate facilities. For example, he pointed out that on one occasion the Prim was laying off casino employees while at the same time the Sahara was advertising for persons with those same skills to work in its casino. He was also concerned about the high labor costs incurred by the Sahara and sought to devise means of reducing them.

Nigro testified that he initially felt the food service at the Prim should be shut down completely and centralized under the Sahara as one of the first steps in integrating the properties. He stated that Chuhlantseff persuaded him to abandon this idea. According to Nigro, Chuhlantseff indicated there were physical limitations in the design of the Sahara kitchen facilities that had to be corrected. In addition, he asserted that Chuhlantseff pointed out that the complete closing of the Prim food service

would interfere with the traffic flow of patrons to the Sahara.<sup>5</sup>

After numerous visits to Reno and after many telephone conversations with Chuhlantseff, Nigro finally made recommendations to the board of directors of the Del Webb Corporation regarding the Reno operation. Although he asserted that his reports were verbal, he set them down in a memo to his file on September 14 and produced this memo at the hearing. (Resp. Exh. 37.) Among his many recommendations were the following:

## 2. Integration of Sahara Reno and Primadonna

- Staff reorganization plan under one General Manager, including Casino operation
- Remodel Primadonna-budget and interior design underway

## 3. Entertainment re-evaluation

- Cancel 1978 schedule in Main Room, effective September 20
- Changed current show policy to one show per night to reduce costs

\* \* \* \* \*

## 8. Food/Beverage Department Review

- Authorized hiring of Joe Bienz as Food & Beverage Director over Reno Operations
- Reduce exorbitant labor costs
- Integrate Sahara Reno and Primadonna Food & Beverage employees and facilities

\* \* \* \* \*

## 11. Integration Plan—Sahara Reno/Primadonna

- Casino personnel organization
- Other operating departments organizational plan
- One financial statement
- Legal ramifications
- Gaming Control Board requirements on Regulation 6 filings
- Remodel of Primadonna
- Sign Program

As a result of Nigro's recommendations, Chuhlantseff was made general manager of both properties and steps were taken to get cost studies on the remodeling of the Prim. All of the administrative and financial responsibilities were placed under Chuhlantseff and the properties were operated as one entity, even though they had separate names at that time. Joseph Bienz was hired as the executive food and beverage director for the Reno oper-

<sup>4</sup> At the time of the hearing, Nigro had left the Del Webb Corporation and was putting together his own hotel-casino management investment company.

<sup>5</sup> It is evident from the testimony that customer traffic flowed from the Prim through the eating area to the overhead walkway into the Sahara.

ations, and Perkins and Tollman reported directly to him.<sup>6</sup>

Although Nigro's recommendations merely related to integrating the food and beverage departments of the Prim with the operation at the Sahara, he and Chuhlantseff testified that they had agreed upon a specific plan to implement the decision to integrate the properties. Nigro stated it was decided that the buffet at the Prim would be closed and the buffet at the Sahara would be the only one serving in this capacity for the entire operation. He also stated it was decided that the coffeeshop at the Sahara would be closed and the Prim coffeeshop would remain open. Nigro testified, however, that it was never intended that the Sahara would be without a coffeeshop on a permanent basis.<sup>7</sup> According to Nigro, he gave Chuhlantseff verbal approval on September 25 to effect these changes and directed him to outline the means by which this would be accomplished in a memorandum to his (Nigro's) office.

Chuhlantseff's memorandum to Nigro, in the form of recommendations submitted for the latter's approval, was dated September 26.<sup>8</sup> In this document Chuhlantseff set forth the following steps which were to be taken to integrate the food and beverage services of the two properties:

1. Close the Primadonna buffet.
2. Buffet service at Sahara Reno only. Service: breakfast, lunch & dinner.
3. Primadonna Coffee House to operate as coffee house only.
4. Close Sahara Station (coffee house) and utilize it only as an overflow for the buffet.
5. Retain Charles Silverman to coordinate with our food and beverage department to do an in-depth study of all food and beverage services at Sahara Reno and the Primadonna to integrate as one operation Sahara Reno.

As one of the initial steps in integrating the food services of the Prim with that of the Sahara, management intended closing the buffet at the Prim and operating that service exclusively at the Sahara. The minutes of the meeting between Chuhlantseff and the department heads on September 29 disclose that Bienz was to implement this step on October 2. (Resp. Exh. 18). The minutes also show that management planned to have an oyster bar, a coffeeshop, and a snackbar with areas for pizza and Mexican food at the Prim. Remodeling on the Prim, however, was to be held up until a report was received from the interior designers.

#### C. The Closing of the Sahara Showroom

As previously noted, the Sahara showroom opened during the latter part of July. It was initially scheduled to present headline performers in two shows a night and the early show was also to involve the serving of food. Because the construction delays had postponed the open-

ing of the showroom, the Respondent was unable to book the name performers it had originally sought and had to settle for lesser-known individuals. This resulted in fewer patrons being attracted to the showroom and the operation became highly unprofitable. As a part of its overall effort to minimize its losses, the Respondent's top officials decided in early September to close the showroom. This could not be accomplished immediately, however, because of the outstanding contracts with the entertainers. Chuhlantseff testified that he met with the showroom employees on September 7 and advised them that the showroom was going to be closed on September 19—when the outstanding contracts of the entertainers expired or had been settled. Chuhlantseff further testified that while it was not the policy of the Respondent, or for that matter of any of the hotel casinos in the industry, to give employees prior notice of the closing down of operations, an exception was made in this instance because the showroom was not to be closed until several weeks later. He stated that he informed the employees the Respondent would make efforts to relocate them in other areas of the food department, if it could be done without creating new positions.

#### D. The Hiring of Bienz and the Employee Opposition to Him

Joseph Bienz was brought in as the executive food and beverage director for the Reno operations from the Sahara Tahoe sometime in mid-September. As indicated by the memoranda and the discussions between Nigro and Chuhlantseff, Bienz' job was to tighten up the operation of the food and beverage department in order to reduce the substantial losses being incurred there. The testimony of the Charging Party's witnesses disclose that Bienz almost immediately engendered animosity and resentment from the Sahara food preparation and food service employees because of the methods employed by him in supervising their department. This resentment was not limited to rank-and-file employees, however, but also existed among the sous chefs (supervisors in the food preparation department) as well. The main complaint of the sous chefs, the dinner cooks, and other food preparation employees centered on the fact that Bienz did not treat them with respect and was dictatorial and rude to the employees generally. Among the food service employees, Bienz was considered to be something of a "storm trooper" who ran the operation with gestapo-like tactics. Doyle, a waitress in the coffeeshop, testified that after Bienz' arrival in Reno, the waitresses in the coffeeshop were no longer permitted to take breaks, even for personal reasons. She also testified that he removed a table used by the food service employees to grab snacks of toast or coffee while working.<sup>9</sup> This table had been located in the hallway leading to the buffet kitchen.

<sup>6</sup> Prior to this, Bienz was the food and beverage director at the Sahara Tahoe property.

<sup>7</sup> This was apparent since the plans envisioned that the coffeeshop at the Prim would be remodeled into a seafood restaurant.

<sup>8</sup> Resp. Exh. 19.

<sup>9</sup> Shirley Smith, the day-shift supervisor in the coffeeshop at the Sahara testified that she knew of no "drastic" complaints against Bienz by the employees. According to Smith, Bienz never changed the breaks or any other working conditions of the employees on her shift. Despite Smith's testimony, it is apparent from the testimony of all of the other witnesses that Bienz did in fact make changes in the employees' working conditions and the employees expressed their dissatisfaction to Smith as well as to other supervisors.

Rumors were also circulating among the food department employees that the executive chef, Perkins, was going to be fired by Bienz. The majority of the food preparation employees and some of the food service employees had worked with Perkins at Harrah's in Tahoe prior to the opening of the Sahara Reno. Many of them were hired or their hiring was recommended by Perkins when the Sahara Reno began recruiting employees. It was apparent from the testimony that the employees formed a strong loyalty toward Perkins.

The dissatisfaction with Bienz increased as the remaining weeks in September passed. On September 30, the Sahara food preparation and service employees, led by the sous chefs, decided that they would confront top-level management on October 2 with their complaints about Bienz' methods and, if no satisfactory resolution of this problem was reached, they would walk out in protest at noon.

On Sunday, October 1, the Respondent gave an all-day picnic for its employees. Word of the employee dissatisfaction, or "employee unrest" as it was termed at the hearing, was a topic of discussion among some of the employees and supervisors as well as among some of the management officials present at the picnic. Lois Miller, a *garde-manger*,<sup>10</sup> testified that she went to the picnic after her shift was over at 5 p.m. Miller was accompanied by her husband. She stated that she had been informed of the plan to walk out by a coworker. She asked John Ciborski, a sous chef, about the matter prior to going to the picnic and he confirmed that it was the employees' intention to take this action on October 2. Miller testified that Ciborski said if she wanted to participate, she should be present that day but if she did not, he would give her the day off.

At the picnic, Miller stated she spoke with the head pastry chef, Ron Hinzen. According to Miller, when she mentioned the walkout to Hinzen, he told her that management was aware of the employee unrest because it had been discussed in a meeting he had attended the day before the picnic. Miller testified that Hinzen said management was working on the matter, but was prepared to close the coffeeshop, and the whole casino if they had to, in order to put down the unrest.

Hinzen, who was no longer employed by the Respondent at the time of the hearing, denied making these comments to Miller. He admitted that while it was possible he had talked to Miller at the picnic, he did not recall doing so. He further testified that while there was a lot of "union talk" going on among the employees, he stayed out of it because it did not interest him.

Larry Close, who at this point had become the administrative assistant to Chuhlantseff, testified that Perkins told him at the picnic that some employees in the food department were upset because of Bienz. According to Close, he asked Perkins if he had informed Chuhlantseff of this fact and Perkins replied, "on several occasions."<sup>11</sup>

<sup>10</sup> A *garde-mange* decorates all of the salads and the fancy preparations that leave the kitchen.

<sup>11</sup> Perkins was present throughout the hearing but was not called as a witness.

### E. The Employee Activity on October 2

Patrick Helton, then a dinner cook at the Sahara, testified that in August he had seen an ad in the local newspaper where the Union was attempting to organize the employees of the MGM Grand Hotel Casino. Helton stated that on August 21, he went to the union office and met with Jim Tobin, the union official in charge of the organizing campaign in Reno. On September 30, Helton was informed by Van DeBogart, a sous chef and his supervisor, that the employees were unhappy with Bienz and were going to walk out on October 2 at noon.<sup>12</sup> Helton testified that he then contacted the union officials and informed them of the employees' discontent and proposed walkout. Tobin advised against this course of action. According to Helton, Tobin stated that he wanted to meet with the sous chefs. Helton then asked Tobin to come to the hotel on October 2 so that some of the employees could talk with him.

On the morning of October 2, a group of employees on the first shift sought to have a meeting with Chuhlantseff in his office. Although the group was composed mainly of sous chefs, it also included nonsupervisory food preparation and food service employees. Ciborski, one of the chief spokespersons for the group, testified that he and Sous Chefs Van DeBogart, Crockett, and Brandt had compiled a list of the employees' grievances in the chefs' office that morning for presentation to Chuhlantseff.<sup>13</sup> According to Ciborski, he and Crockett called Chuhlantseff's office at 7 a.m. and spoke to the general manager's secretary. They requested a meeting but were told that Chuhlantseff had not arrived and he would get back to them.

Doyle testified that an hour or so after she reported to work that morning, her supervisor, Shirley Smith, instructed her to go to Chuhlantseff's office to a meeting to discuss the employees' complaints. Jean Kelly, another waitress in the Sahara coffeeshop, also testified that Smith instructed her to report to Chuhlantseff's office for a meeting. Kelly stated that Smith did not inform her of the purpose of the meeting at that time.<sup>14</sup>

The meeting between Chuhlantseff and the food department employees was held in the general manager's office between 9:30 and 10 a.m. that morning. Ciborski and Crockett were among the chief spokesmen for the group. They expressed the employees' complaints stating that Bienz was running the food department like a Nazi concentration camp. They also told Chuhlantseff they heard that Bienz intended to fire Perkins. The employees demanded that Bienz be terminated and Perkins retained as the executive chef. They told Chuhlantseff that, if their demands were not met, the employees intended to

<sup>12</sup> Van DeBogart and Helton were friends and Helton lived at Van DeBogart's home while he was employed by the Respondent.

<sup>13</sup> Ciborski testified that he first wrote the grievances out in longhand, but later printed them up because he did not want to present them in his handwriting.

<sup>14</sup> Smith denied sending either Doyle or Kelly to the meeting. She also denied that she was present during part of the meeting. Because it is apparent that Smith, during the course of her testimony, was prepared to deny even the most obvious and admitted facts, such as the employee dissatisfaction with Bienz and the manner in which he treated them, I do not credit her where her testimony conflicts with that of other witnesses.

walk out. Ciborski testified that he handed Chuhlantseff a copy of the grievances which he and the other sous chefs had compiled.<sup>15</sup> (G.C. Exh. 18.) According to the employee witnesses, Chuhlantseff stated that he was not aware of their grievances regarding Bienz and that he would take steps to straighten out the matter.<sup>16</sup> According to Ciborski, Chuhlantseff stated that he knew of no plans to terminate Perkins, but that he could not do anything regarding Bienz because he was hired by the corporate headquarters. The employees expressed a fear that their jobs were in jeopardy because they met with Chuhlantseff and he assured them they would not lose their jobs because of the meeting. However, he told the employees that, if they walked off their jobs, there was nothing he could do. Ciborski testified that Shirley Smith came into the office halfway through the meeting. Ciborski also testified that the employees agreed to give Chuhlantseff until 11 a.m. to answer their complaints. He stated that he knew from Van DeBogart that the Union and the media would be present at that time. Doyle and Kelly both testified that Chuhlantseff asked the employees to please call off the media and the Union and he would get everything straightened out.

The witnesses for the Respondent gave a somewhat different version of what occurred at the meeting in the general manager's office. Chuhlantseff testified that he was approached somewhere between 8 and 9 a.m. by three cooks who asked him to meet with a group of the employees. He agreed and the 3 went out and returned with approximately 15 or 20 food preparation employees. Although he was unable to identify the chief spokesman for the group, he stated that two or three employees acted in this capacity. The employees complained about their fear that Bienz was going to terminate Perkins and stated that Bienz was using gestapo tactics in running the food department. They asked that Bienz be terminated. According to Chuhlantseff, the employees indicated that, if their demand regarding Bienz was not met, they would demonstrate on the sidewalk in front of the Sahara at 11 a.m. and that the media would be present. He denied that there was any mention of the Union or any organizing activities on behalf of the Union at this meeting. Chuhlantseff also denied that he asked the employees to call off the media or the Union. He stated that he told the employees he would have to check with the corporate offices in Las Vegas and that he would get back to them as soon as possible. He told the employees that he did not have any plans to terminate Perkins and was unaware of any such action before the employees brought it to his attention. Chuhlantseff stated he also told the employees that if they walked off their jobs or obstructed access to hotel property, or caused embarrassment to the Sahara Reno, they would be subject to disciplinary action. He denied that any list of grievances or complaints were presented to him at this time by the employ-

ees. He also assured them that they would not be terminated for coming to his office to express their grievances. According to Chuhlantseff, he had not heard or been made aware of any of the complaints expressed by the employees prior to the meeting in his office. Chuhlantseff stated that after the employees left, he contacted Nigro in Las Vegas and notified him of the situation. He asked Nigro to get back to him as soon as possible.

Larry Close testified that he was present during the meeting in Chuhlantseff's office. He stated the employees complained about Bienz' gestapo tactics and their fear that he was going to terminate Perkins. According to Close, the employees indicated they were going to walk out at noon and that the media had been notified. He stated they were also fearful that they would be terminated for coming to the general manager's office to voice their complaints. Close testified Chuhlantseff assured them they would not be discharged for coming to his office. According to Close, there was no discussion on any other matters such as raises, late pay, or the Union. Close stated he did not recall Chuhlantseff asking the employees to call off the media or the Union.

Ciborski testified that sometime between 10:45 and 11 a.m., he went back to Chuhlantseff's office. He was accompanied by Brandt, Crockett, and Van DeBogart. According to Ciborski, the employees were seeking to get Chuhlantseff's answer to their demands. He stated that Chuhlantseff informed the sous chefs that he had not received an answer from Las Vegas. Ciborski testified that Chuhlantseff told employees they "had a gun at his head," and ask them to call off the Union and the media. According to Ciborski, he replied that all that was necessary was to take action regarding Bienz and a phone call would stop the planned walkout. Ciborski stated that the sous chefs and Chuhlantseff then left the general manager's office and went to the employees' cafeteria where approximately 100 employees were waiting for Chuhlantseff's response to the demands.

The events in the cafeteria are again in dispute depending upon which witness was testifying. According to Ciborski, the employees as a group asked for Bienz' termination. Chuhlantseff told them Bienz would be removed from the property, but that his termination would have to be "evaluated." Ciborski was unable to recall whether there was any discussion about the Union while Chuhlantseff was at the meeting in the cafeteria, but that at some point, while the employees were gathered there, Helton told them the union representatives were downstairs. According to Ciborski, Helton stated that the employees were not getting anywhere with management and should talk to the union people. Ciborski stated he and the other sous chefs returned to their work stations and did not go to meet with the union officials because they were supervisors.<sup>17</sup>

Helton testified that he came to the hotel at 11:30 a.m. that day, even though he was not scheduled to report to work until 3 p.m. Helton stated he met with the union

<sup>15</sup> Chuhlantseff denied that a list of grievances was handed to him at this meeting. He testified that he later discovered a copy on his desk the next day, although he did not know who put it there. I do not credit his testimony in this regard and find that a list of grievances was in fact presented to him by the employees at this meeting.

<sup>16</sup> Doyle testified that Chuhlantseff stated he was not aware of the employees' problems with Bienz until the evening of October 1.

<sup>17</sup> Doyle and Kelly did not attend the meeting in the cafeteria as they were on duty at the time. A number of the other employees who were on duty remained at their work stations in the coffeshop and the buffet in order to keep them operating.

representatives at the entrance to the showroom in the hotel before going up to the employees' cafeteria. He stated that at the meeting Ciborski presented Chuhlantseff with a list of the employees' complaints and Chuhlantseff, who came to the meeting accompanied by an executive of Del Webb about 5 or 10 minutes after the employees had gathered, said the employees "had a gun to his head." According to Helton, Chuhlantseff told the employees that Bienz was going to be removed from the property. He stated that no one would be fired for attending the meeting, but if anyone walked off their jobs to demonstrate, they would be terminated. Helton testified there was no mention of the Union while Chuhlantseff was at the meeting. He stated, however, that after Chuhlantseff left, he (Helton) told the assembled employees they should talk to the union representatives who were then in the hotel. Helton left to bring the union officials up to the employees' cafeteria but stated that he was followed by hotel security guards. He testified he then returned to the cafeteria and suggested that the employees go to the union hall instead. Helton testified that before he left the hotel, however, he attempted to go to Chuhlantseff's office to speak with him. He asserted that he was prevented from entering by a security guard who told him that Chuhlantseff did not want to see him.

After leaving the cafeteria, Helton and a group of employees who were not on duty at that time went outside of the building where they met with television reporters from the local stations.<sup>18</sup> Helton was interviewed while on the street. He told the reporters that the employees' dissatisfaction was part of a union organizing campaign. He accused Bienz of acting like a "fuhrer" and running the food preparation and service department of the Sahara like a concentration camp.

Chuhlantseff testified that, although he had called Nigro in Las Vegas immediately after the first meeting in his office, Nigro was unable to get back to him before 11 a.m. He stated that someone from the group called his office to find out if a decision had been made regarding Bienz. Chuhlantseff testified that he informed this person he had not received any word from corporate headquarters. At that point, according to Chuhlantseff, Close came in and advised him that the employees wanted to meet with him in the cafeteria. He stated that this was shortly after 11 a.m. Chuhlantseff and Close went to the cafeteria where, according to his testimony, 30 or 40 employees were seated waiting for him. Chuhlantseff stated that the employees wanted to know when he was going to get rid of Bienz. He told them that he would let them know as soon as he had heard from his superiors in Las Vegas. He also testified that he instructed Close to remove Bienz from the property at this time because the employees were insisting that Bienz be terminated. Chuhlantseff denied that any employee read off a list of complaints or handed him a copy. He said that the main concern of the employees was the termination of Bienz and denied he told the employees that they "had a gun to his head." He also denied that there was any mention of the

Union or any union activity by the employees while he was at the meeting.

Close testified that Chuhlantseff instructed him to come to the meeting with the employees in the cafeteria. According to Close, the employees wanted to know why Bienz had not been terminated and was still on the property. Chuhlantseff then directed Close to go downstairs and have Bienz leave the premises. Close testified that while he was at the meeting there was no mention of the Union or any organizing activity, nor did the employees present a list of complaints to Chuhlantseff. Close stated that pursuant to Chuhlantseff's instructions, he left the meeting and informed Bienz that he had to leave the property.

After the television interview, Helton and a group of employees who were not on duty—40 by his estimation—went to the union hall and signed authorization cards. Doyle and several other employees completed their work shift and went to the union hall to sign authorization cards. The testimony indicates that a number of employees took cards with them and solicited other coworkers at the hotel.<sup>19</sup>

#### *F. Management's Response to the Employee Activity*

##### *1. Nigro's arrival in Reno*

Nigro did not arrive in Reno until the afternoon of October 2. After being brought up to date on the events that occurred, he and Chuhlantseff conferred on the situation. According to Nigro, they had to determine "what happened and why it had taken place." Nigro testified that since the spokespersons for the employees were out of the kitchen preparation department and were all sous chefs and supervisors, management wondered why the food and beverage director and the executive chef had allowed this activity to take place among their supervisory personnel. He stated that at approximately 6:30 p.m., Close came in and pointed out to him and Chuhlantseff the television coverage of Helton's interview that afternoon. Nigro recalled that Helton alleged that the cafeteria conditions at the Sahara were terrible and the employees were angry enough to organize and to seek union help. The testimony indicates that the Respondent's officials videotaped the newscast. After conferring with their labor attorney, who flew in from Los Angeles, management drafted a memorandum which was circulated among the food and beverage employees that evening. This memorandum denied that management was unconcerned about the employees' welfare. It also informed the employees that management would continue to make decisions on the basis of what it considered to be best for all concerned. The memo urged the employees not to take any precipitous action and promised that management would respond to the problem troubling them. (G.C. Exh. 8.)

<sup>18</sup> Helton stated he later learned that the Union had called the news media to cover the demonstration.

<sup>19</sup> According to Ciborski, for the next few days cards were being passed among the Sahara food department employees like "supermarket leaflets."

## 2. The discharge of Perkins and Coleman

Sometime during the course of their discussions, Nigro and Chuhlantseff decided that Perkins and Tollman should be discharged. According to Nigro, they felt the employee activity the day before was a rebellion against upper-management, and the food and beverage director and the executive chef should have been aware of the discontent among the employees. Since the sous chefs were the leaders in expressing the employee complaints, upper-management decided that Perkins and Tollman were derelict in their duty by not being aware of the employee unrest or if they were aware, by not informing Chuhlantseff that the employees intended to engage in some action in order to get rid of Bienz. Nigro stated that upper-management decided to wipe the slate clean by getting rid of Perkins and Tollman. On October 3, Perkins and Tollman were fired. The testimony indicates that Tollman was succeeded by his assistant, Michael Cavalli, who became the acting food and beverage director for the Reno operation.<sup>20</sup> Eddie Irniger, the executive chef for the Prim, succeeded Perkins and became the acting executive chef for the Reno operation.<sup>21</sup>

Close testified that he was called into Chuhlantseff's office by Nigro and informed of management's decision to discharge Perkins and Tollman. He stated that he was instructed to go down to the executive chef's office and be certain that Perkins turned in his keys. He testified that when he arrived in the kitchen, Gordon Jenkins, director of security for the hotel, was there with Perkins. Jenkins testified that he had been called by Close and instructed to accompany Perkins to the chefs' office to recover his company keys, elevator card, and any other property belonging to the Respondent. Jenkins stated that he went to Perkins' office and was given these items. Jenkins, who wore civilian clothes, stated that he was the only individual from the security section with Perkins at the time, and that no uniformed security guards were present in the area.<sup>22</sup>

Pam Wheeler, currently the showroom reservation manager, testified that in 1978, she was Tollman's secretary. She stated that after their discharges, she joined Perkins and Tollman at one of the bars in the Sahara where they discussed the action taken against them by management. According to Wheeler, Tollman pulled her away from the bar and asked her if she would be willing to return to the office and type up a memo for him. She stated that Tollman said the memo was necessary to "cover him." Wheeler testified that she went to the office and Tollman called her from a house phone and

dictated the memo. He directed her to backdate the memo 3 or 4 days. According to Wheeler, after she typed the memo, Tollman came to the office and asked her to change the date that she had placed on the memo to September 26.

A copy of the memorandum was introduced into evidence by the General Counsel. (G.C. Exh. 10.) It was directed to Chuhlantseff and stated:

Vlad, since Mr. Joseph Bienz was brought into our organization the morale of the personnel in the entire food department has dropped drastically. With the feedback that I am getting from the crew I foresee heavy union involvement.

Wheeler testified that Tollman told her not to make any copies of the document and he took it with him. On cross-examination, Wheeler stated that prior to the hearing she became aware that management was looking through files for a document. She testified that she then recalled typing and backdating this memo for Tollman. She mentioned the matter to Cavalli and he took her to Chuhlantseff so that she could explain the details to him.

## 3. Cavalli's meeting with the employees on October 3

Helton testified that after Cavalli assumed the duties of acting food and beverage director, he came into the kitchen and asked that a group of the representatives of the employees get together and talk with him. Helton stated that he, Lois Miller, Faith Jackson, and Judy Coyle joined Cavalli in the employees' cafeteria. According to Helton, Cavalli stated that he was going to be the food and beverage director and he wanted to get everything straightened out, but that the employees would have to work with him and that the Union should be forgotten. Helton asked if Cavalli would allow the Union to represent the employees in their negotiations regarding salaries. He stated that Cavalli replied, "Absolutely not." Helton further testified that Miller asked if anybody was going to be fired "over this thing." Helton stated that Cavalli assured the employees that no one was going to be fired and that all of their jobs were secure.

Miller testified that October 3 was her day off and she went to the hotel to get her paycheck. It was at this time that she learned Perkins had been terminated. She stated that she, Helton, and several other employees decided to go to Chuhlantseff's office to inquire about the discharge of Perkins. According to Miller, Cavalli intercepted the employees and told them to meet with him in the cafeteria as they need not bother Chuhlantseff. Miller testified that Cavalli stated none of the employees would be fired because of the activity on October 2. He also stated, according to Miller, that Mathia was coming in and would settle the matter about Perkins' job. Miller recalled that Cavalli indicated management was not certain about Perkins' job and that maybe he would still be working at the Sahara.

Cavalli, on the other hand, gave a different version of this meeting with the employees. He stated that he was approached by Brandt and told that a number of the

<sup>20</sup> Shortly after January 1979, Cavalli became the food and beverage director. He held this position at the time of the hearing.

<sup>21</sup> Irniger remained in an acting capacity as the executive chef. At the time of the hearing he was no longer employed by the Respondent and indicated that he resigned. On cross-examination by the General Counsel, it became evident, although Irniger's testimony was evasive, that the resignation was not a voluntary one. While he was no longer employed by the Respondent, Irniger was present throughout the entire course of the hearing and testified on behalf of the Respondent. The Respondent indicated that it was paying Irniger the rate he would have received as executive chef for each day that he attended the hearing.

<sup>22</sup> After his termination, Perkins became an international representative for the Union. As noted, he was present throughout the hearing but was not called upon to testify.

kitchen preparation employees were concerned about what happened to Perkins and wanted to hear from Cavalli about the situation. Cavalli testified that he met with approximately eight employees, some of whom were supervisors, in the employee cafeteria. He could only recall that Brandt, Crockett, and Beatty were among the group. He did not recall that Miller or Helton were present. He stated that the employees' main concern was about their job security and the discharge of Perkins. Cavalli testified that he told the employees his only concern was maintaining the operation of the food and beverage departments. He did not recall mentioning that Mathia was coming in from corporate headquarters. He denied that he told the employees that Perkins might come back to the hotel or that he told the employees the Union should be forgotten. Because he could not recall whether Helton was present at this meeting, Cavalli had no recollection as to whether a request was made for the Union to represent the employees in their salary negotiations.<sup>23</sup>

#### 4. Management's meeting with the supervisors

Chuhlantseff and Nigro met with all of the Sahara food and beverage department supervisors on October 4. The management officials testified that they wanted to announce the appointments of Cavalli and Irniger and the removal of Bienz from the Reno operation. They also wanted to persuade the supervisors, especially the sous chefs, to pull together and keep the hotel functioning. Although Nigro's testimony indicated that Chuhlantseff was the principal spokesman for management at this meeting, it is evident from all of the testimony that Nigro filled this role during the meeting. Both Chuhlantseff and Nigro testified that the supervisors were informed that they were a part of management and that it was expected that they would keep top management informed about any union activity in their respective sections. They also reminded the supervisors of the Respondent's no-solicitation rule and that the supervisors were expected to enforce it.<sup>24</sup> Nigro testified that he also told the supervisors about management's philosophy regarding union representation for the employees. He stated that management was of the view that it could better represent the interests of the employees than could a union. Both Nigro and Chuhlantseff denied telling the supervisors that any employees involved in union activity would be discharged immediately or that management would close the casino and hotel rather than to allow it to be organized by the Union.

Cavalli, who attended the meeting along with Irniger, testified that Nigro also told the supervisors that the employees had forced management to do something [get rid of Bienz] and he was "not happy" about that fact. Contrary to the testimony of Chuhlantseff and Nigro, Cavalli

denied that the supervisors were instructed by management to report any union activity among their employees to their supervisors.

The witnesses put on by the General Counsel gave a different account of this meeting. Brandt testified that he was directed by Close to attend the meeting. He stated that Close was the first person to speak to the supervisors. According to Brandt, Close said anyone involved in union activity would be dismissed right away.<sup>25</sup> Brandt stated that Nigro then told the supervisors that their jobs were not in jeopardy and he wanted them to work as a team. He also instructed the supervisors to enforce the no-solicitation rule in their areas. Brandt further testified that Nigro stated he would close the coffeeshop and lay off employees in order to stop the Union. On cross-examination, however, he changed this last statement to indicate that Nigro said he would rather close the casino than let the Union represent the employees.

Ciborski also attended this meeting. He recalled that Nigro asked the supervisors to pull together even though Perkins and Tollman had been fired. According to Ciborski, Nigro stated that while there were unions at other resorts of Del Webb, they were not needed. He stated that Nigro said he would "just as soon shut the doors than to deal with an outside party telling [him] how to run the Sahara Reno." Nigro stated no one would be fired for participating in the employee demonstrations but that if the supervisors observed any union activity among their employees, they were to report it to their supervisors.

Kathleen Cagle, a former employee and supervisor, testified that she attended this meeting.<sup>26</sup> According to Cagle, after Nigro advised the employees of the appointment of Cavalli and Irniger, he stated that he did not want a union at the Sahara Reno. Cagle testified that Nigro told the supervisors he would close the doors to the whole operation before he would let the employees or outsiders tell him how to run the Sahara Reno. She corroborated the testimony that Nigro told the supervisors to report any union activity to their supervisors.

Dolores McMacken, another former employee and supervisor of the Respondent, also gave testimony regarding the meeting between upper-level management and the supervisors on October 4.<sup>27</sup> According to

<sup>23</sup> Brandt was the only witness who placed Close at this meeting. Close testified that he did not attend the meeting, and none of the other witnesses recalled that Close was there.

<sup>24</sup> Cagle was the supervisor of the graveyard shift of the coffeeshop and the employees' cafeteria. She was fired by Close in the latter part of October.

<sup>25</sup> McMacken was hired by the Sahara Reno on June 16 as the head supervisor of the food service section. Her title was changed in July to restaurant manager. Sometime in November McMacken was demoted to the position of a relief supervisor. On March 9, 1979, the Respondent's officials decided to terminate McMacken but allowed her to resign. At the time of the hearing, McMacken was employed as a waitress in a restaurant at another hotel-casino in Reno.

It was evident at the hearing that McMacken was biased against and bitter towards the Respondent. Bronna Hankoff, one of the Respondent's management employees, testified that she went to the restaurant where McMacken was currently working for lunch. According to Hankoff, McMacken stated, "[The Respondent] would hear from her," and "She would get them." McMacken admitted having a conversation with Hankoff regarding the Respondent, but stated she told Hankoff, "When the truth comes out, I will get even with the Sahara."

<sup>23</sup> Although Brandt testified at the hearing, he made no mention of being present at a meeting with Cavalli on October 3.

<sup>24</sup> Nigro testified that Helton was at this meeting and asked if any of the employees were going to be fired for engaging in union activities. He testified that it was in response to this question that Chuhlantseff said they would not, but reminded the supervisors about the no-solicitation rule. Since Helton was a dinner cook and not a supervisor, and since the meeting was limited solely to supervisory personnel, it is evident that Helton did not attend this meeting.

McMacken, when the supervisors were called in to the meeting with Chuhlantseff and Nigro, Nigro stated that he would close the doors before he would allow employees or outsiders to come in and run the Sahara Reno.

#### *G. The Alleged Surveillance at the Union Hall*

Helton testified that on October 3 a group of employees met at the union hall sometime between 10 and 10:30 a.m. He stated that while there he noticed a car sitting across the street. According to Helton, Brian Phay, a security guard from the Sahara Reno, was sitting in the car. Helton testified that one of the cooks from the coffee shop left the hall and went across the street to see why Phay was there. Helton stated that when the cook was approximately halfway across the street, Phay drove off in the car. Helton testified that when he reported to work at approximately 3 p.m., he went into the kitchen area and saw Phay and two other uniformed security guards, along with a supervisor, in civilian clothes, accompanying Perkins to the executive chef's office. According to Helton, they were accompanying Perkins to get his belongings after he had been discharged. Helton stated that he approached Phay and asked him if he enjoyed spying on employees. He testified that Phay replied, "Not really," and indicated that he was instructed to do so by his supervisor.

Phay was called as a witness by the Respondent and denied that he had engaged in any surveillance of the union hall. Phay testified that he worked from 4 p.m. until midnight from the last of September through October. He stated that he had never been instructed by his supervisor to go to the union hall to spy on the employees and, in fact, did not even know where the building was located.<sup>28</sup> Phay also denied having any conversation with Helton in the kitchen on October 3 as he had not been detailed to escort Perkins to gather his belongings.

#### *H. Helton's Conversation With Irniger and Van DeBogart*

Helton testified that on October 4, he had several conversations with his supervisors about the union activity taking place at the Sahara. He stated that Irniger spoke to him in the kitchen. According to Helton, Irniger asked him to help get things operating again and to forget about the Union. Helton stated he told Irniger a union was needed at the Sahara in order to protect the employees.

Later that same day, according to Helton, Van DeBogart also spoke to him in the kitchen. He told Helton there had been a meeting between management and the sous chefs earlier that day. Helton stated that Van DeBogart said management intended to fire anyone discovered signing a union card or involved in any activity on behalf of the Union. Helton testified that Van DeBogart asked him not to do anything that would cause him to have to take such action against Helton.

<sup>28</sup> The Respondent's payroll records for the security department disclose that Phay did not receive any overtime pay during the period in question. This would have been the case if Phay had been employed to engage in surveillance of the union headquarters during the morning hours before his shift.

Van DeBogart was not a witness in these proceedings but Irniger's testimony conflicted with that given by Helton. According to Irniger, after his appointment as acting executive chef, he went around introducing himself to the food preparation employees. Irniger indicated that in his position as executive chef at the Prim, he had little or no contact with the food preparation personnel at the Sahara. Therefore, he went around introducing himself and soliciting their cooperation. He denied telling Helton, or any other employee, that he wanted them to forget about the Union. He stated that he merely sought their support to get the operation running smoothly again.

#### *I. The No-Solicitation Rule and its Enforcement*

The testimony indicates that from the time of the opening of the Sahara Reno management maintained a rule against solicitation and distribution of literature on hotel property. James Skaggs, director of industrial relations for the hotels in Del Webb's western operation, testified that Del Webb had what he described as "basically a non-union philosophy." He stated this was true, even though units of employees at the Las Vegas properties were represented by unions. Skaggs testified that after the Sahara Reno opened he put on a training session for the supervisors. The purpose of the training program was to advise the supervisors on what they could or could not do in terms of employee union activity on the hotel property. He distributed copies of an article put out by the Industrial Relations Department of the National Association of Manufacturers (NAM) entitled "Some dos and don'ts for supervisors." (Resp. Exh. 32.) He also met with all of the general managers of the hotel properties in mid-June and supplied them with his version of "supervisory do's and don'ts." (Resp. Exh. 33.) One of the items contained in this last document stated:

A. You can keep outside organizers off the premises. Make sure you do not allow any other solicitations. Maintain Company No-Solicitation Policy consistently.

Skaggs testified that copies of this document were also sent to the personnel directors of the hotels for distribution to the supervisors.<sup>29</sup>

A version of the no-solicitation rule was incorporated in the "Sahara Reno Rules of Conduct," which was given to all employees. Violators of any of these rules of conduct were subject to disciplinary action "up to and including immediate discharge." (G.C. Exh. 11.) The rule relating to the no-solicitation policy stated as follows:

1. No solicitation. Soliciting any employee in any working area for any purpose, including the unauthorized posting, distributing, or circulating of any written materials in a working area and the unauthorized sale of anything on Company time.

<sup>29</sup> Close, who was in overall charge of the personnel department as the administrative assistant to the general manager, testified that no one had ever informed him of Del Webb's policy regarding unions. However, he admitted that he caused copies of the supervisors' do's and don'ts to be distributed to the Sahara Reno supervisors.

It was this rule that Chuhlantseff and Nigro told the supervisors on October 4 that they were expected to enforce.

Enrico DiFulvio, director of purchasing for the Respondent at the time of the incidents involved in this case, testified that his understanding of the Respondent's no-solicitation rule was that employees were not to talk about the Union or pass out union literature on company time or on company property. DiFulvio stated that it was reported to him sometime shortly before the first week in October that Howard Topping, one of the employees in his department, was passing out union cards on hotel property. DiFulvio stated that he told Topping he was not to pass out literature on company time to any of the employees. DiFulvio indicated that this admonition was consistent with his understanding of the Respondent's no-solicitation rule.

#### J. The Threat To Have Topping Arrested

Topping, who was laid off by the Respondent when the coffeeshop was closed on October 6, discussed *infra*, testified that he returned to the Sahara on that date to get his final paycheck. Topping drove his automobile to the hotel and stated that he got permission from the parking lot attendant to park on the hotel property while he went inside. Topping had a stack of union authorization cards and literature spread out over the front seat of his automobile. While inside, he was paged by hotel security. He stated that he returned to the place where he had parked his automobile and was met by Jenkins, the director of security. According to Topping, Jenkins said that he had been terminated and had no right to be on company property. He testified that Jenkins then asked what he was doing with the Union. Topping replied that he was trying to get it in the Sahara. According to Topping, Jenkins said he could see that by the literature in Topping's automobile. Topping then protested that Jenkins had no right to go through his car as he "did not go through Jenkins' car." Topping stated that Jenkins told him to take his belongings and leave the Sahara property. He also testified that Jenkins said if he was seen on Del Webb's property again, he (Jenkins) would have security turn him over to the Reno Police Department and see if they could not put him in jail for trespassing.

Jenkins testified that, when Topping came to the hotel on October 6, his attention was directed to a vehicle parked near a receiving dock blocking a fire exist from the hotel. Jenkins stated he recognized the vehicle to be that owned by Topping and, while he was standing there, Topping came out of the hotel. According to Jenkins, the hotel had a rule that no unauthorized person would be in any nonpublic area on the company property. He stated that he directed Topping to move the car and as he looked inside he noticed a large stack of union cards on the front seat. He then asked Topping if he was affiliated with the Union. When Topping responded that he was, Jenkins stated he told Topping not to interrupt Sahara Reno employees while they were on duty. He admitted telling Topping that he did not want him back on the Sahara property, but denied threatening to have Topping thrown in jail if he denied.

#### K. The Closing of the Sahara Coffeeshop

Nigro's testimony indicated that after he arrived in Reno on October 2 and dealt with the problems brought on by the employee unrest, he and Chuhlantseff turned their attention to the plans for reducing losses and integrating the operation of the two properties. Although the closing of the Prim buffet had been scheduled to take place on October 2, this phase of the consolidation of the operations was never put into effect because of the employee activity that took place that day. Nigro testified that upper management was in a "quandry" because of the significant losses occurring in the food department while at the same time the employees of that department were expressing serious dissatisfaction. According to Nigro, he and Chuhlantseff finally decided to go ahead with the plans that had been developed the prior month regarding the Prim buffet and the Sahara coffeeshop. He said this decision was made even though management was fearful that closing part of the food operation would add to the employee unrest. Chuhlantseff testified that, although Bienz knew on September 29 that management intended to close the Sahara coffeeshop following the closing of the Prim buffet, this particular feature of the consolidation of the food department was never discussed with other department heads at the regular management meetings.<sup>30</sup>

Chuhlantseff further testified that the decision to close the Sahara coffeeshop was based on the factors he and Nigro considered in late August and during September. He testified that the labor costs and the loss per cover in the Sahara coffeeshop were dominant reasons for deciding to close that operation.<sup>31</sup> He also stated that upper management decided that Prim coffeeshop was well established and would provide a traffic flow of customers via the overhead walkway into the Sahara. Chuhlantseff testified that another factor was the need to complete the stainless steel and fan work in the Sahara kitchen, although he and Nigro admitted this work could have been accomplished while the coffeeshop remained open. Chuhlantseff stated that the decision to consolidate the coffeeshops and the buffets had to be put into effect sometime. Therefore, management decided to do it at that time, in spite of the difficulties with the food department employees, because steps had to be taken to reduce the losses incurred by that department.<sup>32</sup>

<sup>30</sup> Irniger testified that he had dinner with Bienz on September 29 or 30, and was told by Bienz that the Prim buffet would be moved to the Sahara the following Monday. Irniger gave no indication in this testimony that Bienz said anything about closing the Sahara coffeeshop thereafter.

<sup>31</sup> Loss or profit per cover was defined as the loss or profit earned for each person served in the coffeeshop. The Respondent's records indicate that during September the Prim coffeeshop was averaging a profit per cover in the amount of 20 cents (Resp. Exh. 21), while the Sahara was experiencing a loss per cover in the amount of \$1.01 (Resp. Exh. 20).

<sup>32</sup> Nigro testified that by closing the Sahara coffeeshop the Respondent would achieve a savings in labor costs of approximately \$125,000 a month. The records reveal that this resulted in a net reduction of the losses of the Sahara food department by approximately \$12,000 for October and approximately \$27,000 for November. (See Resp. Exhs. 8 and 36 and G.C. Exh. 23.)

Cavalli and Irniger were called into Chuhlantseff's office during the afternoon on October 5. They were told that the Sahara coffeeshop would be closed at the end of the graveyard shift, and this would result in layoffs. Cavalli was to handle the layoffs of the food service employees and Irniger was to select the food preparation employees who were to be laid off. According to Cavalli, Chuhlantseff expressed concern that the layoff be accomplished in a fair fashion. He stated that Chuhlantseff instructed him to base the layoffs on seniority. Close and Bonnie Kreyling, the personnel director, were also called in by Chuhlantseff and informed of the closing of the Sahara coffeeshop. Close was instructed to prepare a press release as well as a memo to be placed on the employees' bulletin board notifying them of the closing of this portion of the Sahara's food operation.

Cavalli testified that because of the short notice given to him, he had to call a number of supervisors at their homes and direct them to come in for a late meeting that evening. Smith, McMacken, Cagle, Marilee Jay, then the swing shift supervisor of the coffeeshop and buffet, and a relief supervisor met with Cavalli.<sup>33</sup> According to Cavalli, he told the supervisors to keep as many employees as was needed to run the operation efficiently. He stated that he asked each supervisor to draw up a list of employees to be laid off and to submit them to him. He testified that he directed them to make their selections based on seniority, ability, job performance, appearance, and attitude. He denied telling the supervisors to select for layoff those employees known to them to have been involved in the employee activity earlier that week.

Smith testified that Dolores McMacken selected the employees who were to be laid off from the coffeeshop. According to Smith, she supplied McMacken with job performance evaluations of all of the employees under her supervision and McMacken made the selection. Smith testified that she gave poor evaluations to Doyle, Pat Fisk, and Jean Kelly. According to Smith, she had received numerous complaints from customers about Doyle's poor attitude. She also stated that she had received complaints about Fisk and Kelly as well. According to Smith, these complaints were as many as three to four a week. She stated that these three were the only waitresses about whom she had received complaints. On cross-examination, however, Smith was unable to give specifics about the complaints against these employees. She stated that they were simply customer complaints and that she would merely give the employees verbal warnings. In addition, according to Smith, Kelly was frequently late or failed to come in to work. At one point in her testimony, Smith stated that McMacken asked for the evaluation of the employees because some were going to be laid off, but at another point Smith professed not to have any knowledge as to why McMacken

wanted the evaluations of the employees. She stated that making the evaluations was a daily routine.

McMacken and Cagle testified that when they met with Cavalli they were instructed to make a list of all of the employees under their supervision and to place a star or an asterisk by the names of those employees who were suspected of being involved with the Union or who were dragging their feet and not working. Cagle testified that she put a star by the name of an employee (Kordonaway) and this employee was subsequently laid off.<sup>34</sup> Although McMacken testified that Cavalli asked that stars be put by the names of the employees known to be involved in union activities, her affidavit did not indicate that this comment was made. In her affidavit she said there were numerous customer complaints about Doyle and Kelly. She stated that she received this information from Smith. Contrary to her testimony, McMacken's affidavit indicated that the food service employees selected for layoff were chosen on the basis of their ability and job performance.<sup>35</sup>

Marilee Jay, who was the food service manager at the time of the hearing herein, testified that at the meeting between the supervisors and Cavalli, the supervisors were told to keep the employees who were needed and to lay off those who would become excess after the closing of the coffeeshop. According to Jay, Cavalli did not tell the supervisors to lay off any specific employees or any employees who were involved in union activity. She stated that Cavalli did not give the supervisors any guidelines by which to select the employees who were to be laid off.

The record does not disclose the exact number of food service employees who were laid off as a result of the closing of the Sahara coffeeshop. Although it is not clear in the record, Cavalli's testimony on cross-examination indicated that the Prim buffet was closed either immediately before or at the same time that the Sahara coffeeshop was closed. Cavalli stated that none of the Prim buffet employees were laid off but, rather, they were transferred to the Prim coffeeshop. After the closing of the Prim buffet and the Sahara coffeeshop, the Sahara remained without a coffeeshop operation until approximately December 18, 1978. At that time, the Prim coffeeshop was closed for remodeling into a seafood restaurant and the Sahara coffeeshop was subsequently reopened.

As previously noted, Irniger made the selection of the food preparation employees to be laid off at the Sahara after the closing of the coffeeshop. Irniger stated that he was unfamiliar with the Sahara kitchen employees and had to rely on the evaluations furnished him by Ed Huestis, the assistant executive chef at the Sahara. He

<sup>33</sup> Smith testified that she came to work and found the coffeeshop closed. She stated that she went to McMacken and was told that the coffeeshop was closed because of a lack of business. All of the other witnesses, however, placed Smith at the meeting on the evening of October 5. Cavalli testified that he had called Smith at her home and told her to come to the meeting. Accordingly, I find that Smith did attend the meeting.

<sup>34</sup> The records indicate Kordonaway was rehired by the Respondent on March 24, 1979.

<sup>35</sup> When questioned by the Respondent's counsel about the apparent conflict between her testimony at the hearing and the statements contained in her affidavit, McMacken said that at the time she gave the affidavit she was advised by the Respondent's counsel to tell the truth, but not to mention the Union. The Respondent's counsel took the stand and testified that he advised McMacken to tell the truth, but not to volunteer any information when she was interviewed by the Board agent taking the affidavit.

testified that he and Huestis made up a list of the employees who were scheduled to be laid off. Irniger also stated that with the elimination of the coffeeshop operation, he had more sous chefs than he needed in the kitchen. He stated that many of those that were retained were demoted to the rank of dinner cook. According to Irniger, he did not post the list of the names of the employees to be laid off. He stated that he and Huestis compiled the list in his office and then he left it on his desk for a brief period of time. Irniger denied knowing which of the employees were involved in the protest over Bienz or in union activity. He said the selection of the employees was based solely on the evaluations provided him by Huestis.

Although Irniger could not recall whether Helton's name was on the list, it is clear from the testimony that Helton was one of the employees selected for layoff. Irniger testified that when he first replaced Perkins on October 3, he had a conversation with Helton in the kitchen. According to Irniger's testimony, Helton seemed unhappy and said he had already given management 2 week's notice a few days before and he was leaving the Sahara. Irniger stated he later learned that Helton was going to go into some kind of business in Denver. According to Irniger, he may have discussed the fact that Helton was going to leave with Cavalli.<sup>36</sup>

Lois Miller was one of the employees laid off by Irniger on October 6. She stated that she reported to work sometime between 6 and 7 p.m. and found out that the Respondent was closing the coffeeshop at the end of the graveyard shift. She was also told that a list of the employees to be laid off would be posted in the executive chef's office. According to Miller, she went into the office to see the list and observed that Helton's name was at the top of the list. Helton testified that October 5 was his day off, but he had been told by Van DeBogart there was going to be a meeting of the employees at 10 p.m. to find out what was going on at the Sahara. Helton stated that he did not arrive until approximately 11 p.m. and was informed that the Respondent was closing the Sahara coffeeshop. Helton stated that he was informed Irniger had a list posted in his office but that it had been taken down. He was told that his name was at the top of the list. Helton denied ever telling Irniger or anyone from management that he intended to leave the Respondent's employ and go into a catering business in Denver, Colorado.

The testimony indicates that on October 6 Cavalli, Close, and Kreyling met with a group of the food service employees in the banquet room to explain the layoff. Doyle, who did not attend this meeting, testified that when she reported to work that morning Smith told her the coffeeshop had been shut down for remodeling and that Doyle was being laid off. She stated that Smith said management would try to place the employees elsewhere and directed Doyle to go to the personnel office. Doyle testified that on her way to the personnel office she met

McMacken, who told her there was nothing that management could do.

Cavalli stated that he and Kreyling met with the employees and explained that the coffeeshop was closed for economic and financial reasons. He testified that the employees were concerned about being relocated or rehired by the Sahara. According to Cavalli, the employees were told they could inquire at the personnel office to see if there were other jobs available in the hotel and if so, they could seek a transfer. He stated that he and Kreyling also told the employees to check back with the personnel office to see if other openings would become available later. He told them that if they had the skills required for such openings, they would be considered. According to Cavalli, it was pointed out to the employees that they were not told, according to Cavalli, that management would contact them if openings occurred. Rather, they were to keep in touch with the personnel office themselves.

Close recalled that Kreyling told the employees they would have to contact her regarding rehire in the food service department because she could not maintain a list for recall purposes. Jay testified that she told some of the employees she listed for layoff that there were openings in the Prim coffeeshop. Although Jay did not identify these individuals by name, she stated that several of these individuals applied at and were rehired by the Prim.

#### *L. The Discharge of O'Dell and Topping*

O'Dell worked in the storeroom of the purchasing department at the Sahara. He testified that about a week before October 6 Topping asked him if he wanted to sign a union card. O'Dell stated he wanted to think about the matter. According to O'Dell, he went to DiFulvio, the director replied he did not believe in unions. According to O'Dell, DiFulvio said that if a person were good enough, he would give them a raise.<sup>37</sup> O'Dell testified that on October 3 he went to a meeting at the union hall and picked up some authorization cards. He stated that he and Topping distributed them in front of the Sahara after work on October 4 and 5. O'Dell testified that on October 6, DiFulvio told them there was going to be a layoff in the purchasing department and he did not know how many or who would be let go. He stated that at approximately 1 p.m. he was told by DiFulvio he was going to be laid off.

According to O'Dell, on October 23 he had occasion to go into the Primadonna where he saw DiFulvio sitting at a bar. He testified that DiFulvio asked him, "Where his union buddy 'Kodiac' [Topping] was." O'Dell said he had not seen Topping in several days. He stated that DiFulvio then told him that he would have normally tried to bend over backwards for him (O'Dell) but he knew that O'Dell was involved in something big and he could not help him. He asked O'Dell why he did not come to him in the first place about the Union and

<sup>36</sup> The testimony indicates that all of the personnel action or layoff slips for the employees who were selected for layoff were signed by their supervisors, except in the case of Helton. Cavalli, rather than Irniger, signed Helton's layoff slip as the management official authorizing the layoff.

<sup>37</sup> The Respondent's records indicate that O'Dell, Topping, and all of the employees in the purchasing department had received a \$2-a-shift raise sometime during September. DiFulvio testified that these raises were granted because there was a tight labor market in Reno and he wanted to keep the employees.

O'Dell replied that he had spoken to DiFulvio a week before the layoff about the Union.

Topping, who also worked in the purchasing department at the Sahara under DiFulvio, testified that he became interested in having a union at the Sahara in early June. He stated that, when the protest against Bienz occurred on October 2, he attended a union meeting after work and he picked up a number of cards and passed them out to Sahara employees at the street entrances of the hotel. He stated he continued to do this after his shift on Wednesday and Thursday evenings. Topping testified that on October 4, DiFulvio asked him if he had heard of anyone soliciting for the Union. According to Topping, he replied that he had not. He testified that DiFulvio then told him that if he saw anyone soliciting on behalf of the Union to send them to the executive offices. Topping was terminated along with O'Dell on October 6.

DiFulvio testified that when the coffeeshop at the Sahara was closed Chuhlantseff told him there would have to be a cutback in personnel, and the storerooms of the Prim and the Sahara had to be consolidated into one storeroom at the Sahara. DiFulvio stated that he brought over the Prim food purchasing agent and laid off the purchasing agent at the Sahara along with O'Dell and Topping. He testified that O'Dell was the least senior person in his department and Topping was the least reliable.<sup>38</sup>

DiFulvio denied ever having a discussion with O'Dell regarding unions or telling the employee that he did not believe in unions. He also denied asking O'Dell on October 23 where Topping was or telling O'Dell that because he was involved in union activity he (DiFulvio) could not help him at the time of the layoff. DiFulvio admitted being informed that Topping was passing out union cards on hotel property. He stated this is when he told Topping that he was not to pass out literature on company time to any employees. He denied ever telling Topping, however, that if he saw anyone passing out union cards he should send them to the executive offices. DiFulvio also admitted that a week before O'Dell and Topping were laid off he had given them a raise of \$2 a shift. He stated that the raises were given to other employees in his department at the same time because the labor market in the Reno area was poor and he wanted to retain the employees. He indicated that when the raises were given they had been approved by Chuhlantseff and there was no mention that the Sahara coffeeshop was going to close.

#### *M. The Respondent's Recall Policy and the Alleged Efforts of Some Employees to be Rehired*

All of the management officials testifying on behalf of the Respondent indicated that it was not the practice in

the hotel-casino industry in Reno to give employees advance notice of layoffs or to maintain a recall or rehire list of employees who had been laid off. Hopkins, who succeeded Kreyling as director of personnel on October 16, testified that the Reno labor market was "wide open" and therefore none of the establishments in the industry ever maintained a recall policy because there was no problem to get employees for all departments. He stated that after he became personnel director, the Respondent was averaging 45 to 50 applicants a day for positions at the hotel. He also testified that the Respondent usually hired 50 to 60 percent of these applicants and that there was a high turnover, especially in the food and slot machine departments. Close testified that the policy of the industry is predicated on the fact that many of the employees are transients and the personnel departments could not keep track of their whereabouts in order to contact them when jobs were available.

The testimony indicates that it was the practice for laid-off employees who were eligible for rehire to go to the personnel department to inquire about openings or directly to department heads, who would then advise the personnel office that they wanted to hire a particular individual. Hopkins testified that while this policy was followed when he took over the personnel office, he instituted a different practice in late November, but did not put it into writing until February 1979. (See Resp. Exh. 39.) Under the new procedure established by Hopkins, he would make a determination from the former employee's personnel file as to whether the individual was eligible for rehire. If there was a question in his mind, he would contact the former supervisor of that person. Once a favorable determination of eligibility was made, the applicant for rehire would then be sent to the hiring supervisor for a direct interview.

Several of the employees laid off on October 6 testified about their efforts to secure reemployment by the Respondent. Miller stated that she spoke with Irniger at the hotel approximately 2 weeks after her layoff. According to Miller, she and Doyle went to the hotel specifically to see about reemployment. She stated that Irniger told her he saw no reason why she could not be recalled, but that the \$52 per shift that she had been earning as a garde-manger was too much. Concerning this incident, Irniger testified that when Miller asked him if there was any way she could come back, he told her that if he had an opening she could return. He stated that he asked Miller how much she had been earning and was told that she had been receiving \$52 per shift. He stated he felt she was overpaid because she did not perform the work of a true garde-manger, but that if an opening developed he would consider her and pay her whatever the job classification required.

Doyle and Miller went to the personnel office to inquire about their eligibility for rehire. They stated that a clerk in the office told them that they were eligible for rehire by the Respondent as there was nothing in their personnel files to indicate otherwise. Miller testified that the clerk also advised them that they would be contacted by management regarding the time to come back to work.

<sup>38</sup> O'Dell initially worked at the Primadonna in March 1966 as a buffet runner. He left to go to California and returned to work for DiFulvio in the purchasing department in December 1977. He left to go to another job and returned to the Sahara in June 1978. Topping admitted that during the time he worked at the Sahara, he had been admonished by DiFulvio on several occasions because of his failure to lock the door to the storeroom area and for not getting requisitions filled out properly for supplies.

Doyle also went to see Bronna Hankoff, then director of catering services for the Sahara, shortly after she was laid off. She asked about availability of work. Hankoff testified that she told Doyle the banquet staff was filled, but she would use her as a fill-in when the need arose. Hankoff called Doyle to work a reception and a breakfast. She stated that business was slow, however, and she could not provide work for Doyle or any of the other fill-ins on a consistent basis. Hankoff stated that because Doyle and the other fill-ins did not continue to contact her periodically she took their names off the Respondent's payroll.<sup>39</sup>

Kelly testified that she went to the Respondent's personnel office sometime in January 1979. According to Kelly, she was prompted to do this because of an advertisement she noticed in the newspaper where the Respondent was seeking food service employees. Kelly stated that she was told by someone in the personnel office that there were openings in the restaurant. Kelly said the person to whom she spoke advised her that someone from management would get in touch with her. Kelly testified that she was never contacted by anyone from the Respondent regarding reemployment.

The Respondent introduced into evidence copies of advertisements it had placed in the newspapers for employees during the months of January, February, and March 1979. (Resp. Exhs. 40-42.) These documents reveal that the Respondent did not advertise for food service employees until March 22, 1979. The only advertisements placed in January related to the hiring of room attendants.<sup>40</sup> Hopkins testified that he could find no record of any application for rehire being filed by Doyle, Kelly, or Miller.

Helton testified that shortly after his layoff on October 6 he called Kreyling's assistant in the personnel office and was told that he could be rehired only if he appeared before a "review board." Helton did not make any other effort to seek reemployment with the Respondent until May 15, 1979. He testified that he applied for rehire because he saw an advertisement in a newspaper. He asserted that when he went to the personnel office he was told his application would have to be reviewed by the director of personnel and that he should return in an hour. Helton stated that when he returned he was informed that he was eligible for rehire and would have to be interviewed by the executive food and beverage director. According to Helton, he then went to that individual's office but was informed that he was not in. He then had the executive food and beverage director paged, but there was no response. Helton stated he returned to the food and beverage director's office and left the application with the secretary, who informed him that he would be contacted. Helton testified that since leaving his application he had not been contacted regarding reemployment by the Respondent.

<sup>39</sup> There was a mixup regarding Doyle's paycheck as a fill-in. Hankoff had treated Doyle as a transfer rather than a laid-off employee, and assumed that Doyle's name was on the Respondent's payroll when she started to work as a fill-in. When Doyle failed to receive her check, the error was discovered by Hankoff and corrected by filling out papers treating Doyle as a new hire.

<sup>40</sup> It is not clear what position Kelly applied for, however, her past experience was as a waitress in the food service section.

Hopkins testified about the events surrounding Helton's application for reemployment in May 1979. He stated that when the application was brought into his office by his secretary he instructed her to have Helton return in an hour because he wanted to review Helton's file. Since he was aware that Helton had been named in an unfair labor practice charge by the Union, Hopkins contacted the Respondent's attorney. When the attorney advised him that it was permissible to rehire Helton, Hopkins arranged for an interview with Executive Food and Beverage Director Gilbert Pierrel. These instructions were relayed to Helton by Hopkins' secretary. Hopkins further stated that Helton's application and rehire slip were never returned to him, so he checked with Pierrel to determine what had occurred. According to Hopkins, the executive food and beverage director stated that he waited for an hour for Helton to show for the interview, but he never appeared. Hopkins also indicated that the Respondent had openings at that time for cooks—a job for which Helton was qualified.

McMacken testified that in February 1979, prior to the time she resigned, Cavalli came to her on one occasion and asked her about an applicant for reemployment. According to McMacken, Cavalli wanted to know if the applicant had previously been involved with the Union. She also testified that on several occasions Close asked her about the union involvement of prospective rehires. She stated that Hopkins was present during one of these conversations with Close. Close, on the other hand, denied that he had ever questioned McMacken about the union activities of former coffeshop employees applying for reemployment with the Respondent. Hopkins also testified that he had no recollection of ever asking McMacken about the union involvement for former coffeshop employees.

#### Concluding Findings

The testimony of the witnesses for both sides presents sharp conflicts and contrasting versions of the events that are alleged to have occurred in this case. In addition, there are a number of instances wherein the testimony of the witnesses for both the General Counsel and the Respondent conflict among themselves as well as with the testimony given by the witnesses for the opposing side. While this may be in part due to faulty recall, I am of the opinion, having observed the witnesses and weighing their statements against the objective evidence adduced at the hearing, that it is also the result of an effort on the part of some of the witnesses to dissemble and to obscure the true facts. For this reason, in making credibility determinations in order to establish the true facts, I find it necessary in some instances to credit a portion of a witness' testimony and to discount or disbelieve other parts. While this compounds the difficulty in resolving the facts, it is not an uncommon experience in cases of this nature. See opinion of Judge Learned Hand in *N.L.R.B. v. Universal Camera Corporation*, 179 F.2d 749, 754 (2d Cir. 1950).

Section VI of the complaint alleges that the Respondent, through acts and statements of agents and supervisors, engaged in activity which violated Section 8(a)(1)

of the Act. Addressing the allegations of this section as they appear, the following findings are made.

#### 1. The conduct of Hinzen

It is alleged that Hinzen threatened employees with "serious reprisals" on October 1 if they engaged in union or other protected concerted activities. Support for this allegation is found in the testimony of Lois Miller, who stated that Hinzen informed her he had attended a management meeting and that management was aware of the employee dissatisfaction and was working on the matter. She asserted he also told her that management was prepared to close the coffeeshop and the casino and lay everyone off in order to put down any employee unrest. Hinzen denied making these statements to Miller at the picnic, although he acknowledged it was possible he may have talked to her. He also denied having attended a top-management meeting in which the employee unrest was discussed.

Weighing the trustworthiness of the testimony of these two witnesses, I find the testimony of Hinzen to be more credible. Miller stated that Hinzen indicated he had participated in a management meeting in which the matter of the employee unrest was discussed. It is clear that Hinzen, as head pastry chef, did not participate in any of the department head meetings. Until the arrival of Bienz, the executive chef and the food and beverage director were the participants from the food department and after his arrival, Bienz himself represented this department. Hinzen was a midlevel supervisor, as were the sous chefs. However, none of the witnesses at this supervisory level, including the sous chefs who testified on behalf of the General Counsel, made any reference to a management meeting on employee unrest being held prior to the employee picnic on October 1. I conclude, therefore, that such statements were made by Hinzen. I further credit Hinzen's denial regarding the asserted statement that the Sahara management would close the coffeeshop and the casino in order to stifle the discontent among the employees.

On the basis of the above, I find that the General Counsel has failed to present any credible evidence to support the allegations contained in paragraph VI(a) and (b) of the complaint. Accordingly, these allegations of the complaint should be dismissed.

#### 2. The threats uttered by Chuhlantseff on October 2

The complaint alleges that on October 2 Chuhlantseff threatened employees that if they engaged in a walkout or a demonstration they would be terminated. The record discloses that Chuhlantseff had two meetings with employees on that date. The first was in his office and the employee delegation consisted of sous chefs as well as nonsupervisory employees from the food department. There is no question that the main thrust of the employee dissatisfaction related to the methods employed by Bienz in running the food department and the fear that Bienz would terminate Perkins as the executive chef. Although Chuhlantseff and Close, who also attended this meeting, testified that the employees' complaints were limited to these issues, I do not credit their testimony in

this regard. Ciborski testified that he had a list of grievances which he and other sous chefs compiled prior to going to the meeting. The employee complaints included dissatisfaction with Bienz, wages, lack of sufficient help in the food service area, and the possibility of employees seeking union assistance. In spite of Chuhlantseff's and Close's denials that a list of grievances was presented at this meeting, it seems highly improbable that the employees would request a meeting with the top management official in the Reno area and not cover all of their concerns. The attempt on the part of the Respondent's witnesses to portray a lack of knowledge of anything at this point but the issues relating to Bienz and Perkins rings hollow and appears contrived. Thus, I find that, at the first meeting, the Respondent's management was made aware of all the employee concerns and that the employees were considering seeking union assistance in redressing their grievances. In addition, Chuhlantseff was told that the employees were prepared to demonstrate outside of the hotel in order to bring their grievances to the attention of the public. Accordingly, I credit the testimony of Doyle and Kelly that Chuhlantseff asked the employees at this meeting for time to contact the corporate headquarters in Las Vegas and urged them to call off the Union and the media. By his own admission, Chuhlantseff told the employees that, if they walked off their jobs to demonstrate, or if they obstructed access to the hotel property or caused embarrassment to the Sahara, they would be disciplined or terminated.

The testimony regarding the second meeting in the employees' cafeteria shortly after 11 a.m. is conflicting. Helton stated that Ciborski presented Chuhlantseff with a list of grievances and the general manager accused the employees of "having a gun to his head." Helton also stated that Chuhlantseff told the employees that while no one would be fired for meeting with him, if any of the employees walked off their jobs to demonstrate they would be terminated. Ciborski testified that he spoke with Chuhlantseff shortly before the meeting in the cafeteria in order to determine if management had reached a decision on the employees' request regarding Bienz. It was at this time that Chuhlantseff stated, according to Ciborski, that the employees "had a gun to his head." Ciborski made no mention of any warning by Chuhlantseff at the meeting in the cafeteria that management would fire any employees who walked off the job. Topping, who also attended the meeting, recalled that Chuhlantseff stated the employees "had a gun to his head," but in the course of his testimony made no mention of the fact management would fire any employees who left their jobs to demonstrate. Topping also testified that Helton questioned Chuhlantseff on employee complaints about working conditions and the failure to receive raises, and was told by Chuhlantseff that a list of grievances had to be presented to him before he could act on them.

Because of the conflicting testimony given by the witnesses for the General Counsel concerning this meeting, I am not prepared to find that Chuhlantseff told this group of employees that they would be subjected to discharge if they walked off their jobs and demonstrated. In view of Chuhlantseff's admission that he made such a

statement to the employees at the earlier meeting, and in view of the fact that all of the witnesses to this second meeting only Helton attributed such a statement to Chuhlantseff, I find that Helton's testimony in this regard is not reliable. Accordingly, I find that no such comment was made by Chuhlantseff at the second meeting.

Having found that Chuhlantseff did tell the employees at the first meeting that they would be subject to discipline or discharge if they walked off their jobs in order to demonstrate in support of their grievances, the question becomes whether this statement by Chuhlantseff interfered with the right of the employees to engage in protected concerted activity. I find that it did and that it was coercive and in violation of Section 8(a)(1) of the Act. There is no question but that the employees were protesting about their treatment under the supervision of Bienz and their fear that he would discharge Perkins. It is also clear that the employees' complaints involved their working conditions and other matters as well. But even if their grievances were limited solely to Bienz and the actions they feared under his continued supervision, the efforts to bring this issue to management's attention and the announced plan to demonstrate in order to get the matter resolved would constitute activity protected under Section 7 of the Act. See *Hitchiner Manufacturing Co., Inc.*, 238 NLRB 1253 (1978). As indicated, however, the complaints encompassed other matters involving the employees' working conditions and, thus, make it even more apparent that the employee activity enjoyed statutory protection. *N.L.R.B. v. Washington Aluminum Company, Inc.*, 370 U.S. 9 (1962); *Vic Tanny International, Inc.*, 232 NLRB 353 (1977). Accordingly, the statement made by Chuhlantseff at the first meeting that employees who walked off their jobs to demonstrate and cause embarrassment to the Sahara, or who prevented access to the hotel, would be subject to discipline or discharge was a threat to take reprisals against employees for engaging in protected concerted activity. Although the latter part of this statement indicates that employees who blocked ingress or egress at the Sahara while demonstrating would be subject to discharge, this does not relieve the Respondent from the responsibility of the coercive nature of Chuhlantseff's statement. At the time Chuhlantseff made the statement, he had no way of knowing whether the employees in demonstrating would do so in such a manner as to remove their actions from the protection of the statute. Therefore, the threat to discharge them for walking out to demonstrate, without any prior indication that the demonstration would be done in an unprotected fashion, constitutes an unlawful threat of reprisal against the employees for engaging in activity sanctioned by Section 7. I find, therefore, that by this statement the Respondent interfered with the rights of the employees protected by Section 7 of the Act and in so doing violated Section 8(a)(1) of the Act.

### 3. Van DeBogart's warning to Helton

The testimony presented in support of this allegation was given solely by Helton. Helton stated that Van DeBogart told him, on October 4, that the Respondent had a meeting of all of the sous chefs and intended to fire anyone signing a union card or who was involved in

union activity. Helton stated that Van DeBogart urged him not to do anything that would cause him (Van DeBogart) to have to take such action against him. The Respondent asserts that Helton's testimony is highly improbable and, even if such a statement were made, it was not coercive because of the personal relationship between Van DeBogart and Helton. I reject both of these arguments. It is apparent that Van DeBogart spoke to Helton after the meeting between upper-level management and the supervisors on October 4. It is also evident, just from the testimony of the Respondent's own witnesses, that the supervisors were instructed to report any union activity occurring in their section to their supervisors. Thus, I do not find it improbable that Van DeBogart would have reported the results of such a meeting to Helton, who was his friend and a leading activist on behalf of the Union. Further, it is highly probable that Van DeBogart urged Helton not to do anything which would cause Van DeBogart to take action against him in order to protect his own position. In the absence of any evidence to refute Helton's statements concerning this incident, I credit his testimony.

I find, therefore, that Van DeBogart's statement to Helton was made with the intent to restrain the employee in his activities on behalf of the Union and this unlawfully interfered with the rights guaranteed him by Section 7. I further find that by this conduct the Respondent committed a violation of Section 8(a)(1) of the Act.

### 4. DiFulvio's unlawful interrogation of an employee

The complaint alleges that DiFulvio unlawfully interrogated an employee about his union activity on or about October 3. Several incidents involving DiFulvio were testified to by O'Dell and Topping, although it is not clear which of these the General Counsel is relying on to support this particular allegation.

O'Dell testified that he was asked to sign a union card by Topping during the first week in October and he went to DiFulvio and asked how he felt about the Union. He stated DiFulvio said he did not believe in unions and that if a person were good enough he would give him a raise. Although DiFulvio denied having this conversation with O'Dell, even if it had occurred, it establishes nothing more than DiFulvio's antipathy toward unions. It certainly cannot be considered unlawful interrogation since it was initiated by O'Dell and contained no questions about O'Dell's union activities or that of any other employee.

The other incident involves Topping, who stated that DiFulvio asked him on October 4 if he had heard of anyone soliciting for the Union. Topping testified that DiFulvio asked him to send anyone he discovered soliciting to the executive offices. Although DiFulvio admitted telling Topping he could not distribute union literature on company time when he was informed that the employee was passing out cards, he denied making any of the statements attributed to him by Topping. Based on the inherent probabilities of the testimony and my observation of the witnesses, I do not credit Topping's statements regarding this asserted incident. In my judgment, it is highly unlikely that DiFulvio, a supervisor, would

request that Topping, a known union adherent and card solicitor, send anyone he discovered soliciting on behalf of the Union to the executive offices. Indeed, Topping's story would have more credibility had he stated that DiFulvio wanted him to report any union solicitors directly to him (DiFulvio), as his immediate supervisor. But to suggest that Topping was to instruct anyone he discovered soliciting to go to the executive offices simply is not believable. For this reason, I find that the record evidence fails to establish that on or about October 3, the Respondent, through DiFulvio, unlawfully interrogated an employee about his union activities. Therefore, this allegation of the complaint must be dismissed.

5. DiFulvio's statement that O'Dell was terminated because of his union activity

The complaint alleges that on or about October 6 DiFulvio told employee O'Dell that he was terminated because of his union activity. The testimony introduced in the record, however, indicates that on October 23, several weeks after his discharge, O'Dell saw DiFulvio sitting at a bar in the Prim. It was at this time that DiFulvio asked O'Dell where his "union buddy, Kodiak [Topping] was," and told O'Dell that he "normally would have tried to bend over backwards for him, but knew that O'Dell was involved in something big and he [DiFulvio] couldn't help him." Although DiFulvio denied meeting O'Dell or making these comments, I do not credit him in this regard. While it has been found, based on the inherent probabilities that DiFulvio's testimony concerning his conversation with Topping was credible. I am unable to assign a similar stamp of acceptability on his denial about the conversation with O'Dell on October 23. Having observed DiFulvio on the stand, I am persuaded that portions of his testimony were less than candid. For example, when questioned about giving raises to O'Dell and Topping a week prior to the time they were laid off, he asserted that it was necessary in order to insure retention of the employees in his department because of the tight labor market in the Reno area. Yet Respondent's personnel director, Hopkins, testified that the Reno labor market was wide open and the Respondent had no difficulty getting applicants for any of the jobs which were available. Thus, I find that DiFulvio, during parts of his testimony, was willing to shade the truth in order to justify his actions or to prevent candid disclosure. Accordingly, I find that O'Dell's testimony regarding his encounter with DiFulvio on October 23 is to be credited.

It is evident from the above that DiFulvio was informing O'Dell that he would have made an effort to retain the employee when the consolidation of the purchasing department made the layoffs necessary, but could not do so because of O'Dell's involvement in activity on behalf of the Union. Not only is this statement evidence of an unlawful motive in selecting O'Dell for layoff, but it also constitutes an independent violation of Section 8(a)(1) as well because it is evidence of unlawful interference with O'Dell's statutory right to assist and support the Union.

6. Jenkins' threat to have Topping arrested for trespassing

The evidence discloses that this incident occurred on October 6 rather than October 9 as alleged in the complaint. Topping had returned to the hotel to get his final paycheck after he had been laid off by DiFulvio and parked his automobile on company property. When he returned he was met by Jenkins and the testimony of both witnesses indicates that Jenkins observed union literature on the front seat of Topping's car and ordered him off the hotel property. Topping testified that Jenkins told him if he ever returned he would be escorted off the property and turned over to the Reno police and charged with trespassing. Jenkins, on the other hand, testified that he ordered Topping off the property and told him he did not want him to return.

There is little difference between the testimony of the two witnesses other than Topping's assertion that Jenkins said he would have him arrested. Having observed both of these individuals while testifying and bearing in mind the Respondent's avowed antipathy toward unionization of its employees, I credit the version given by Topping regarding this incident. Accordingly, I find that Jenkins not only ordered Topping off the property but threatened to have him arrested for trespassing if he returned. I find that Jenkins uttered this statement because he felt that Topping was engaging in union activity on the Respondent's property when in fact Topping was merely there in order to get his final paycheck. I further find that Jenkins made this threat because he was aware that Topping was a supporter of the Union and this violated Section 8(a)(1) of the Act. This is especially true since as will be found herein, Topping was unlawfully selected for layoff because of his activities on behalf of the Union.

7. The asserted surveillance of the union hall

The complaint alleges that Brian Phay, one of Respondent's security guards, engaged in surveillance of a meeting of the employees at the union hall on October 3. The evidence in support of this, however, leaves much to be desired. Helton testified that he observed Phay sitting across the street in an automobile while the employees were meeting at the union hall, and, when one of the employees approached Phay, he drove off. Phay credibly denied that he had ever been instructed to engage in surveillance of the employees' union activities and denied that he had any such automobile as described by Helton available to him at that time. In addition, the payroll evidence introduced by Respondent establishes that Phay had not received any overtime pay during this period, which would have been the case had he engaged in such activity while he was off shift. Concededly, it is true that Phay could have been recompensed by the Respondent by other means, but this is pure speculation and there is no evidence of it in the record. In addition, Helton's testimony regarding this particular incident appears to be contrived. Helton stated that later that same afternoon he approached Phay, who was part of a group allegedly escorting Perkins from the Respondent's premises, and asked if he enjoyed spying on the employees. The cred-

ited testimony, however, indicates that only one individual, Jenkins, was escorting Perkins off the premises and that no other uniformed security officers were present at the time. Therefore, I do not credit Helton's testimony in this regard and find that the General Counsel has failed to establish by any credible evidence in the record that the Respondent, acting through Phay or any other security officer, engaged in surveillance or created an impression of engaging in surveillance of the employees' meetings at the union hall.

#### 8. The Respondent's no-solicitation rule and its enforcement

The General Counsel asserts that the no-solicitation rule maintained by the Respondent is unlawful on its face. Since, as acknowledged in the Respondent's brief, the rule forbids "soliciting any employee in any working area for any purpose on . . . company time," it is clear that the rule maintained by the Respondent is presumptively invalid under the Board's holding in *Essex International* and its progeny.<sup>41</sup> But the Respondent contends that the presumption is overcome because of the peculiar nature of the hotel-casino business, i.e., that solicitation in the hotel lobby or showroom would interfere with and annoy the hotel patrons "who by necessity occupy the 'work area' for many of the hotel employees." Although there is some persuasiveness to the Respondent's argument, it must be rejected. The Respondent's rule forbids solicitation in *all* working areas of the hotel property, not just areas occupied by customers or patrons. Therefore, it would restrict employee organizational activity in noncustomer occupied work areas on "company time." Since company time would include employee breaks or lunchtime, it is clear that the Respondent's rule would unlawfully restrict employee organizational activity during times and in places that the Board has deemed permissible. For this reason, I find that the Respondent has not rebutted the presumption of invalidity of its no-solicitation rule, nor has it established that the rule is necessary for "protection, safety, or discipline." *Sparks Nugget, Inc., d/b/a John Ascuaga's Nugget*, 230 NLRB 275 (1977).<sup>42</sup>

In light of the above, I find that the Respondent did maintain a facially invalid no-solicitation rule, and the maintenance of such a rule constitutes an independent violation of Section 8(a)(1) of the Act. *Essex International, Inc., supra*.

In addition to maintaining the invalid no-solicitation rule, it is alleged that the Respondent unlawfully enforced the rule when DiFulvio told Topping he could not pass out union literature on company time to any of the employees. DiFulvio also testified it was his understanding that the no-solicitation rule prohibited employees from talking about the Union or passing out any union literature on company time while on company property. Having found that rule itself was unlawful, it follows that DiFulvio's enforcement of the rule against

Topping so as to prevent him from distributing union cards and literature to employees during working hours was also unlawful and violated Section 8(a)(1) of the Act.

#### 9. The closing of the coffeeshop

The General Counsel argues that the Respondent closed the Sahara coffeeshop on October 6 in order to stifle the union activity among the food department employees. It is contended that the reasons advanced by the Respondent for making and implementing this decision are pretextual and are offered solely to mask the unlawful motive underlying the decision.

The Respondent, on the other hand, submitted ample economic justification for taking steps to reduce the substantial losses being incurred by the hotel operation in general and the food operation in particular. Indeed, the Respondent's financial records, the minutes of the department head meetings, and the testimony of Chuhlantseff and Nigro fully substantiate the fact that radical changes were necessary to sustain the Reno operation until it could achieve a profitable posture. The construction delays, the inability to schedule first-class entertainment in the showroom, the change in attitude about the operation of the Prim which resulted in the need to remodel and refurbish that property in order to integrate it with the Sahara, were all valid and legitimate factors justifying management's need to restructure parts of its operation to reduce losses as much as possible.

Ordinarily, in these circumstances, it would be rash and indeed presumptuous to attempt to second-guess the wisdom of management's decision to close the Sahara coffeeshop. However, there are a number of factors here which cannot be ignored and which, in my judgment, cast a severe cloud of suspicion over the events that occurred on October 6.

First, it is evident from the contents of the minutes of the department head meetings that Chuhlantseff discussed all aspects of the operations with his top-level managers; some of these matters appeared highly important and significant and others were merely routine and mundane in nature. Nevertheless, with the sole exception of his memorandum to Nigro on September 26, none of these documents reflect any discussion about the closing of the coffeeshop at the Sahara. In contrast, it is clear from the minutes that the department heads were informed of the decision to close the buffet at the Prim. It would seem highly unlikely that the general manager would fail to discuss the closing of the Sahara coffeeshop while informing the top managers of the closing of the Prim buffet; this is especially true since these were both important changes in the Respondent's operation. Moreover, several of the department heads would have been, of necessity, directly involved in the implementation of both decisions.

From the testimony, it would appear that only Nigro and Chuhlantseff were privy to the decision to close the Sahara coffeeshop and that Chuhlantseff informed Bienz of this decision on September 29, when he directed Bienz to implement it on October 2. In contrast to Chuhlantseff's testimony, however, the minutes reflect that it was

<sup>41</sup> *Essex International, Inc.*, 211 NLRB 749 (1974). See also *Comar Glass Company*, 244 NLRB 379 (1979); *Switchcraft, Inc.*, 241 NLRB 985 (1979).

<sup>42</sup> Cf. *East Bay Newspapers, Inc., d/b/a Contra Costa Times*, 225 NLRB 1148 (1976).

only intended that Bienz close the buffet at the Prim. Indeed, Irniger, who was a major witness for the Respondent, testified that he had dinner with Bienz on September 29 or 30, and was told by Bienz that the Prim buffet was to be closed the following Monday. At no time during his testimony did Irniger state that Bienz also indicated there would be a closing of the Sahara coffeeshop as well.

Other than the testimony of Nigro and Chuhlantseff and the memo of September 26, the Respondent has produced no evidence to substantiate its claim that the decision to close the Sahara coffeeshop was made *prior* to October 2. On the other hand, the Respondent did produce substantial documentation establishing that the decision to close the buffet at the Prim was in fact made prior to that date. This gives rise to a strong inference that no management decision regarding the closing of the Sahara coffeeshop was made until *after* the occurrence of the employee activity on October 2. But this is not the only factor which tends to refute the Respondent's assertion that the closing of the Sahara coffeeshop was based on economic justification.

It is apparent from the record that the Respondent's officials considered the locus of the employee unrest and union activity to be centered in the Sahara food department. Nigro testified that he felt Perkins and Tobin had been derelict in their responsibility as top-level managers in failing to be aware that the employee unrest was going on in that department. He also stated that he was concerned because many midlevel supervisors (the sous chefs) appeared to be leaders in the employee dissatisfaction. Therefore, management knew at least by October 2 that the unrest and organizational activity originated with the food preparation and food service employees of the Sahara. Thus, the very department that was the focal point of the employee activity was the department selected to bear the greatest burden in terms of layoffs resulting from the decision to close the coffeeshop. Furthermore, while the Prim buffet was closed at the same time, the record discloses that none of the employees of that operation were laid off. Rather, they were absorbed into the staff of the Prim coffeeshop or placed elsewhere. I deem it quite significant that management was able to accommodate the employees of the Prim, who were not involved in the employee protest or the union activities, but failed to do so for the employees of the Sahara where all of the activity centered.

In addition, the manner in which the employees at the Sahara were selected for layoff supports the contention that the Respondent's management was using this as a means to deliver a crushing blow to the union activity among the employees in the food department. It cannot be gainsaid that the Respondent was hostile to the concept of having its Reno employees represented by a union. This is evidenced by the statements of Nigro that he felt it was not necessary to have the employees represented by a third party. I also credit Ciborski's testimony that at the supervisors' meeting on October 4 Nigro stated that he would "just as soon shut the doors" than have an outside party telling him how to run the Sahara Reno. When one considers this avowed antipathy toward union representation of the employees and the manner in

which the layoffs were effectuated, it becomes evident, in my judgment, that management was using the closing of the Sahara coffeeshop as a means to rid itself of union supporters and to suppress union activity among the employees in the food department.

McMacken and Cagle, who were in supervisory positions at the time, testified that Cavalli instructed the food service supervisors to place a star or an asterisk after the names of the employees involved in union activity or who were "dragging their feet." Although Cavalli and Jay denied that this was so, I do not credit their testimony in this regard. In addition to observing their demeanor while testifying, I note a glaring inconsistency in their statements about the instructions issued by Cavalli to the supervisors. Cavalli stated that he told the supervisors to use seniority, job performance, ability, appearance, and attitude as the guidelines in determining which of the employees were to be laid off. Jay, on the other hand, testified that Cavalli did not give the supervisors any guidelines when telling them they had to lay off the excess employees resulting from the closing of the coffeeshop. Since the testimony of these two witnesses was offered to support the Respondent's position, I consider it noteworthy that each gave a different version of this event. I conclude, therefore, that their testimony is not a reliable description of what was said by Cavalli during his meeting with the coffeeshop supervisors.

In crediting McMacken and Cagle I am not unmindful of their obvious bias against the Respondent. Each had been terminated (McMacken was allowed to resign under threat of termination) and their resentment over their treatment by the Respondent was quite apparent. Moreover, I am also aware that McMacken's testimony was at variance with the statements contained in the affidavit she gave the Board representative about this event. However, I also consider that her affidavit was given at a time when she was sympathetic to the Respondent's interest.<sup>43</sup> While the variance between McMacken's affidavit and her testimony is substantial enough to raise suspicions about her credibility, her testimony is consistent with the finding that the decision to close the Sahara coffeeshop was made *subsequent* and *not prior* to the protected activity engaged in by the employees. It is also consistent with the facts found herein regarding the selection of other food department employees for layoff, *infra*. Therefore, I find that the testimony of McMacken and Cagle is to be credited and that the Respondent did indeed, through Cavalli, instruct the supervisors to lay off not only marginal employees but also those who were known to be involved in activities on behalf of the Union.

Among the food preparation employees selected for layoff, the record testimony indicates that the name of Helton headed the list compiled by Irniger. There is no question but that Helton was the leading union activist

<sup>43</sup> Although McMacken testified that she was advised by the Respondent's attorney not to mention anything about the Union, I do not find this to be the case. The Respondent's attorney advised her to tell the truth and not to volunteer any information. That McMacken may have interpreted this to mean that counsel was advising her not to mention the Union in no way indicates that this was in fact the instruction given by the Respondent's attorney.

among the Sahara employees. He went on television on October 2 and publicly announced that the employees needed the assistance of a union in order to correct the conditions about which they were complaining. Although Irniger testified that, when he first became the acting executive chef at the Sahara, he spoke to Helton and was advised by the employee that he had given notice and was leaving to go into a business in Denver, I do not credit his testimony at all in this regard. I find Irniger to be a less than candid witness who was tailoring his testimony in an effort to exculpate the Respondent of any wrongdoing. Thus, I find that during his conversation with Helton, Irniger was seeking to get his support, along with that of other food preparation employees, in order to get the kitchen operation running smoothly again. I further find that during this conversation Irniger urged Helton to forget about the Union and Helton insisted that one was needed to protect the employees. It is evidence that this conversation, along with Helton's other activities on behalf of the Union, made him an undesirable person in the food department. Accordingly, I find that his name was indeed the first on the list compiled by Irniger and Huestis of those to be laid off, and that he was so selected because he was the foremost advocate for the Union among the food department employees. I note at this point that of all the employees selected for layoff, Helton's layoff slip was the only one signed by Cavalli. In my judgment, this is further evidence that Helton was being singled out for retaliation by the Respondent's officials because of his activities on behalf of the Union.

In sum, I find that the decision to close the Sahara coffeeshop was in fact made *after* the employee activity on October 2 and not prior thereto as contended by the Respondent. While I find that the Respondent had ample economic justification to cause it to restructure the food department at the Reno operation, I also find that the closing of the coffeeshop at the Sahara was not one of the methods that Nigro and Chuhlantseff decided upon in September in their efforts to reduce the losses in the food department. Based on Nigro's own testimony, it is apparent that it was never intended that the Sahara would be without a coffeeshop and, indeed, the record indicates that the Prim coffeeshop was permanently closed on December 18 and the Sahara coffeeshop was reopened. I also find that the absence of discussion about the closing of the Sahara coffeeshop with the various department heads prior to October 2 is further evidence that the Respondent's decision to close the Sahara coffeeshop was not contemplated until after the employees engaged in union and protected activity. The timing of the decision and its implementation, coming after the onset of the union organizational activity among the employees, the suddenness with which these plans were implemented, the selection of the employees to be laid off as a result of the closing of the coffeeshop, and the Respondent's avowed animus toward union representation of its employees lead me to conclude that the General Counsel has effectively rebutted the Respondent's claim of economic justification for its actions. I find, therefore, that the closing of the coffeeshop at the Sahara was a maneuver designed to enable the Respondent to lay off

employees in that portion of its operation where the activity in support of the Union was most prevalent and thereby deliver a devastating blow to the union activities of its employees. *Eccomunity Farms, Inc., d/b/a Mountain Meats*, 236 NLRB 1481 (1978). Conduct such as this clearly interferes with, restrains, and coerces employees in exercising rights guaranteed by Section 7 of the Act and discriminates against employees in order to discourage membership in a labor organization. Accordingly, by the above conduct, the Respondent has violated Section 8(a)(3) and (1) of the Act.

In so finding, I do not consider it necessary to treat the allegation that the Respondent has refused to recall or rehire the laid-off employees for unlawful reasons. The evidence shows that the Respondent, consistent with industry practice, does not maintain a recall list of laid-off employees because many are transients and because of the ready availability of persons with the needed skills in the Reno labor market. The only evidence presented that the Respondent was checking the union sympathies or prior union activities of employees seeking rehire was presented by McMacken. She stated that on several occasions Cavalli and Close questioned her about the prior union activity of certain unnamed employees who were seeking rehire. However, the evidence also indicates that some of the former employees who were laid off after the closing of the coffeeshop were subsequently rehired by the Respondent as its operations expanded and construction was completed. The only other evidence in the record is presented by Helton, who testified that when he sought reemployment in May 1979 he was told that his record had to be reviewed and he had to have an interview with the executive food and beverage director. It is apparent from the testimony of Hopkins that Helton never kept this interview. I find, therefore, that no substantial record evidence has been presented to indicate that the Respondent refused to reemploy any of the laid-off employees because they had been involved in union activities. Indeed, the testimony shows that the Respondent was willing to rehire Helton because it was in need of dinner cooks at the time he applied. Nor does the testimony of Doyle and Kelly establish an unlawful rehire policy, since each of these employees was told that they were eligible to be rehired by the Respondent. It is clear from their testimony that each waited to be recalled but, as the Respondent had no such recall policy, there is no evidence of unlawful discrimination against them in terms of rehire.

#### 10. The unlawful discharges of O'Dell and Topping

Having found that DiFulvio told O'Dell he would not have been laid off but for his involvement in the union activity, it follows from this finding that O'Dell was selected for layoff because he was an active supporter of the Union. While it is true that under the Respondent's plan for integrating the Prim and the Sahara that the food department was being consolidated, it is equally clear from DiFulvio's statement to O'Dell on October 23 that the employee would not have been affected by the consolidation except for the fact that he was an active supporter of the Union. Accordingly, I find that by this

action the Respondent discriminated against O'Dell in order to discourage employee support for the Union and thereby violated Section 8(a)(3) and (1) of the Act.

The evidence indicates that Topping was somewhat of a problem employee for the Respondent. DiFulvio stated that he repeatedly had to admonish Topping for failing to secure the storeroom and to get the proper requisitions filled out. But, in spite of this, the Respondent retained Topping in its employ and, 1 week prior to his layoff, gave him a wage increase. Having rejected DiFulvio's explanation for the reason underlying the wage increase, i.e., the so-called tight labor market in Reno, it is evident that DiFulvio was prepared to overlook Topping's shortcomings as an employee until he became active on behalf of the Union. While DiFulvio characterized Topping as the least reliable employee in his department, his testimony indicates that he was well aware of Topping's activities on behalf of the Union and, indeed, enforced the Respondent's unlawful no-solicitation rule against Topping.

In light of the above, I find that Topping's activities on behalf of the Union, and not his deficiencies as an employee, were the "dominant or moving cause" for his selection for layoff by DiFulvio. *Western Exterminator Company v. N.L.R.B.*, 565 F.2d 1114 (9th Cir. 1977). My conclusions in this regard are buttressed by DiFulvio's reference to Topping after the layoff as O'Dell's "union buddy." It follows, therefore, that Topping was laid off for unlawful reasons and in violation of Section 8(a)(3) and (1) of the Act.

#### CONCLUSIONS OF LAW

1. The Respondent, Sahara-Reno Corporation, d/b/a Sahara Reno is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Hotel, Motel, Restaurant Employees and Bartenders Local Union No. 86, a/w Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening employees on October 2 with discipline or discharge if they left their work stations and engaging in protected concerted activity in protest of their working conditions, the Respondent violated Section 8(a)(1) of the Act.

4. By informing an employee on October 4 that employees would be discharged if they engaged in activities on behalf of the Union, the Respondent violated Section 8(a)(1) of the Act.

5. By informing an employee on October 23 that he had been laid off because of his activities on behalf of the Union, the Respondent violated Section 8(a)(1) of the Act.

6. By threatening, on October 6, to cause the arrest of an unlawfully laid-off employee if he returned to the Respondent's property to engage in union activities, the Respondent violated Section 8(a)(1) of the Act.

7. By maintaining and enforcing an invalid no-solicitation rule, the Respondent violated Section 8(a)(1) of the Act.

8. By closing the coffeeshop at the Sahara Reno on October 6 and thereby causing the layoff of employees in order to suppress union activity among its food department employees, the Respondent violated Section 8(a)(3) and (1) of the Act.

9. By laying off employees O'Dell and Topping on October 6 because they were involved in activities on behalf of the Union, the Respondent violated Section 8(a)(3) and (1) of the Act.

10. The Respondent did not threaten employees on October 1 with serious reprisals or by stating that it would terminate its Reno operations if they engaged in union or other protected activities.

11. The Respondent did not, through its supervisor and agent, DiFulvio, unlawfully interrogate an employee about his union activities on October 3.

12. The Respondent did not engage in or cause an employee to engage in unlawful surveillance, or create an impression of engaging in unlawful surveillance of employees' union activities.

13. The violations found herein are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, the Respondent shall be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Since the decision to close the Sahara coffeeshop has been found unlawful, all of the employees laid off in the food department as a result of the implementation of that unlawful decision are discriminatees entitled to offers of employment to the positions they held prior to their layoffs in October 1978, without prejudice to their seniority and other rights and privileges. Thus, it is not necessary on this record to establish their specific identities or to prove that each so affected was engaged in union or other protected activities. Cf. *D.R.C., Incorporated*, 233 NLRB 1409, 1421 (1977). As to William O'Dell and Howard Topping, inasmuch as it has been found that they were specifically laid off because of their activities on behalf of the Union, they are also entitled to reinstatement to their former positions of employment without prejudice to their seniority or other rights and privileges. All of the employees found to have been discriminated against here are entitled to be made whole for loss of earnings they may have suffered by reason of the unlawful discrimination, and backpay shall be computed with interest thereon, in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977).<sup>44</sup> Finally, because the evidence discloses that some of the laid-off employees were subsequently rehired by the Respondent in the following year, this is a matter which can be ascertained and adjusted in the compliance proceedings herein.

<sup>44</sup> See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

#### ORDER<sup>45</sup>

The Respondent, Sahara-Reno Corporation, d/b/a Sahara Reno, Reno, Nevada, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with disciplinary action or discharge if they leave their work stations to engage in protected concerted activity in protest of their working conditions.

(b) Informing employees that they will be discharged if they engaged in activities on behalf of the Union.

(c) Informing employees who have been laid off that their layoffs were caused by their activities on behalf of the Union.

(d) Threatening to cause the arrest of employees if they engage in union activities on the Respondent's property.

(e) Maintaining and enforcing an invalid no-solicitation rule which prohibits employees from soliciting in all work areas on company time.

(f) Shutting down or closing parts of its operation in order to suppress union activity among its employees.

(g) Laying off employees because they are involved in activities on behalf of the Union.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act, as amended.<sup>46</sup>

<sup>45</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

<sup>46</sup> See *Hickmott Foods, Inc.*, 243 NLRB 1357 (1979).

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer William O'Dell and Howard Topping and all food department employees laid off as a result of the decision to close the Sahara coffeeshop on October 6, 1978, immediate and full reinstatement to their former positions, or, if those jobs no longer exist, to substantially equivalent position without prejudice to their seniority or other rights and privileges. Make the above-described employees whole for any loss of pay which they may have suffered by reason of the discrimination against them in conformity with the section of this Decision entitled "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security records, timecards, personnel records and reports, and all other records necessary and relevant to analyze and compute the amount of backpay due under this recommended Order.

(c) Post at its Reno, Nevada, hotel operations copies of the attached notice marked "Appendix."<sup>47</sup> Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by the Respondent's authorized representative, shall be conspicuously posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

<sup>47</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."